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Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 847)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 496

M. E. HEISER, PETITIONER,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 10, 1945.

CERTIORARI GRANTED DECEMBER 17, 1945.

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELLE WOODRUFF; and LEONARD J. WOODRUFF, APPELLANTS,

vs.

M. E. HEISER, APPELLEE.

No. 3053.

WILLIE MAE WOODRUFF, APPELLANT,

vs.

M. E. HEISER, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED SEPTEMBER 5, 1944.

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IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE EUGENE RICE, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

In the Matter of

LEONARD J. WOODRUFF, BANKRUPT.

No. 7623—Civil.

Proof of Claim of Willie Mae Woodruff.

3 At Los Angeles, in the Southern District of California on the 12th day of July, 1939, came Willie Mae Woodruff and made oath and says:

That the said Leonard J. Woodruff, the person for whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is, justly and truly indebted to said claimant, in approximately the sum of Four Hundred Twenty Two Thousand Seven Hundred Twenty Eight Dollars and 58/100 ($422,728.58); that the consideration of said debt is as follows:

That the said claimant and the said bankrupt are and at all times herein mentioned were husband and wife, and that at diverse times since the said marriage of the said claimant and the said bankrupt, your said claimant has received by gift, bequest and devise, sums of money and property aggregating about the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00) the exact sum of which your claimant cannot state, and that all of said moneys and property by reason of gift, bequeath or devise, became and were and now are the separate property of your said claimant.

That with the consent and acquiescence of your said claimant, the said bankrupt received moneys, stocks, bonds, and property so belonging to your claimant as her separate property, and by her acquiescence and consent, from time to time invested and reinvested same in diverse investments in his own name, and at all such times it was understood and agreed by and between claimant and her husband, the bankrupt, that the said bankrupt should receive the whole of all such

moneys, stocks, bonds and property in which the same might be invested in trust for her use and benefit.

That by the use and investment of said moneys, stocks, bonds, and property, the said bankrupt as Trustee of said claimant received rents, issues, and profits therefrom and the proceeds thereof and received all of such rents, issues, and profits and proceeds therefrom as Trustee for your said claimant and in trust for her as her separate property:

4 That the said bankrupt received large sums of money from the said trust property so held by him in the way of rents, issues, profits, and dividends, and had never rendered any accounting to your claimant therefor nor has he rendered any accounting to your claimant of the various properties acquired by him for her use and benefit as her Trustee and the said claimant charges upon her own information and belief that there is a large sum of money due from the said bankrupt as her said Trustee arising out of her said sums aforesaid, the exact amount of which said money is unknown at this time to your claimant; but that your claimant alleges, on information and belief that said sum so due from the said bankrupt to your said claimant is at least the sum of Four Hundred Twenty Two Thousand Seven Hundred Twenty Eight Dollars and 58/100 ($422,728.58), which includes interest thereon, which said sum as aforesaid has been arrived at by your claimant from facts and instruments in her hands and her possession, a computation thereof having been made a copy of which is hereto attached and marked Exhibit "A"; and that your claimant hereby demands that the said bankrupt or his Trustee thereof be required to render an account of the said Trusteeship showing the sums of money which had been received by him, and that the claimant be permitted hereinafter to amend her claim as hereinbefore set forth so as to include therein such sums of money as may be determined due and owing to her as a result of the said trust.

That no part of the said claim or debt as hereinbefore set forth has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; and that said claimant has not, nor has any other person by claimants order, or to the

knowledge or belief of deponent, or for claimant, had or received any manner of security whatever for said debts.

That no accounting or demand therefor has ever been had by and between said claimant and said bankrupt, nor has the said bankrupt ever denied or refused to account to your claimant under his said trust.

Said claimant hereby constitutes and appoints Mark S. Feiler and or W. W. Potter claimant's true and lawful attorney in fact to represent said claimant, in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustee of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

WILLIE MAE WOODRUFF, Individual.

Subscribed and sworn to before me this 12th day of July, A. D. 1939, and also acknowledged on this date by the subscriber, who is personally known to me. Florence Feiler, Notary Public in and for the County of Los Angeles, State of California. My commission expires Nov. 8, 1941.

Filed July 20, 1939. George F. Clark, Referee.

Exhibit A.

Statement of Funds and Property Received by Bankrupt as Trustee for Claimant.

			Amount	Accrued Interest
1.	May 13, 1920	U. S. Government Third Liberty Loan 4¼s.	$5,000.00	$3,150.00
2.	Mar. 15, 1920	Draft on 1st National Bank, Los Angeles, California	25,000.00	33,250.00
3.	July 2, 1920	Check on 1st National Bank, Los Angeles, California	350.00	428.00
4.	July 13, 1920	Check on 1st National Bank Los Angeles, California	5,300.00	4,049.00
5.	July 20, 1920	U. S. Government Third Liberty Loan 4¼s	10,000.00	6,300.00
6.	July 22, 1920	Check on 1st National Bank Los Angeles, California	400.00	532.00
7.	Sep. 14, 1920	Check on 1st National Bank, Los Angeles, California	300.00	399.00
8.	Sep. 28, 1920	Check on 1st National Bank, Los Angeles, California	725.00	964.00
8a.	Oct. 25, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles,	2,376.00	3,659.04
8b.	Nov. 13, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	960.00	$1,463.00
8c.	Dec. 13, 1920	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	250.00	380.50
8d.	Feb. 24, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	300.00	378.00

8e.	June	10, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	200.00	252.00
8f.	June	17, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	2,500.00	2,870.00
8g.	July	27, 1921	Check to Leonard Woodruff, 1st Nat'l Bank Los Angeles	300.00	377.00
8h.	Sep.	3, 1921	Check to Leonard Woodruff, Citizens Trust	300.00	357.00
8i.	Oct.	10, 1921	Check to Leonard Woodruff, 1st Nat'l Bank, Los Angeles	16,587.50	20,320.53
9.	Feb.	24, 1922	Chicago, Burlington & Quincy Railroad Bonds	14,000.00	16,960.00
10.	Dec.	2, 1922	Check on 1st National Bank, Los Angeles, California	5,000.00	2,000.00
10a.	Dec.	11, 1922	Check on 1st National Bank to Leonard Woodruff	10,750.00	13,169.25
11.	Sep.	16, 1922	Transfer of credit in 1st Nat'l Bank, Los Angeles	30,000.00	35,700.00
12.	Dec.	19, 1922	Memorandum of check on 1st Nat'l Bank, Los Angeles	3,425.00	4,070.00
13.	July	22, 1922	New York Central Railroad Bonds	15,000.00	17,000.00
14.	Oct.	29, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	7,500.00	5,600.00
15.	Oct.	29, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	1,500.00	1,680.00

			Amount	Accrued Interest
16.	Oct 30, 1923	Sight Draft on 1st Nat'l Bank, Los Angeles	14,000.00	15,680.00
17.	May 31, 1924	Check on 1st Nat'l Bank Los Angeles	1,000.00	1,050.00
18.	May 29, 1924	To debit in account 1st Securities Company	861.77	873.00
18a.	Jan. 3, 1931	Transfer of funds from Security 1st Nat'l Bank	5,001.20	2,975.56
		Brought for'd	$178,826.47	$195,886.88
Continued:				
19.	Apr. 23, 1931	Chicago, Burlington Railway Stock	21,000.00	11,760.00
20.	May 16, 1931	To Slaughter, Anderson and Fox for stock	5,000.00	2,800.00
21.	May 18, 1931	To Slaughter, Anderson and Fox for stock	5,000.00	2,800.00
22.	May 21, 1931	To Slaughter, Anderson and Fox for stock	12,500.00	7,000.00
23.	May 30, 1931	To banks, Huntley and Co. for stock	15,000.00	12,400.00
24.	June 1, 1931	To Slaughter, Anderson and Fox for stock	2,500.00	1,400.00
25.	December 1931	State of Utah Bonds (5 at $5,000.00)	25,000.00	15,000.00

26.	June 13, 1934	Money Order to Leonard J. Woodruff	100.00	35.00
27.	July 7, 1934	Paid to Burnett Wolfson for Leonard J. Woodruff	200.00	56.23
28.	A bloc, of 15,000 shares of Pacific Gas and Electric Company stock, the value of which is unknown at this time.			
29.	165 shares of Security 1st National Bank Stock		5,464.00	
			$270,590.47	$249,138.11

Recapitulation.

Principal due	270,590.47
Accrued Interest	249,138.11
Total	$519,728.58

Received on account of the above indebtedness, by the sale to me on December 28, 1934, of lot situated at the Southwest corner of Alvar Street and Hollywood Boulevard, Los Angeles, California, at a valuation of $95,000.00	$95,000.00	
Received in cash on December 3, 1935	2,000.00	
	$97,000.00	
		97,000.00
Balance due		$422,728.58

Proof of Unsecured Debt. [M. E. Heiser.]
(Form 31)

8 At Los Angeles, in said Southern District of California on the 14th day of July, A. D. 1939, came M. E. Heiser, of San Francisco, in the County of San Francisco and State of California, in said District, and made oath and says:

That the said Leonard J. Woodruff, the person by whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said deponent in the sum of Two Hundred Seventy Eight Thousand Six Hundred Thirty-one and 71/100 ($278,631.71) Dollars; that the consideration of said debt is as follows: Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $164,000.00, by false pretenses and false representations through *wilfull*, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon, at the rate of 7% per annum, amounting to $113,036.71 and costs of $1595.00 fixed and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein as plaintiff and against Leonard Woodruff, bankrupt herein as defendant, certified copy of which judgment of said United States Court is marked Exhibit "A" is hereto annexed and referred to as a part hereof; that no part of said debt has been paid; no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no set-offs or counter-claims to the same and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where the said debt was contracted.

M. E. HEISER, Creditor.

Subscribed and sworn to before me this 14th day of July,

1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal).

Letter of Attorney.

To Leonard J. Meyberg and or Rupert B. Turnbull:

I, M. E. Heiser, the claimant mentioned in the foregoing claim, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent to such appointment of truste; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In Witness Whereof, I have hereunto signed my name and affixed my seal the 14th day of July, A. D. 1939.

M. E. HEISER.

Signed, sealed and delivered in the Presence of: Signed: Paul Joseph. Acknowledged before me, this 14th day of July, 1939. Paul Joseph, Notary Public in and for said County and State. My commission expires July 6, 1940. (Seal).

Filed July 20, 1939. Geo. F. Clark, Referee.

Exhibit A

In the District Court of the United States, Southern Division of California, Central Division.

M. E. Heiser, Plaintiff, v. Leonard Woodruff et al, Defendants. No. 7256-C.

Judgment.

In this action the defendant Leonard Woodruff having been regularly served with process and having failed to appear, plead or otherwise defend, and the default of the said defendant Leonard Woodruff having been entered, and upon application of plaintiff the matter having been brought before the court for hearing, the Honorable Geo. Cosgrave presiding, and evidence having been introduced in open session of this court on the 20th day of March, 1939, and the court being fully advised in the premises.

On motion of the plaintiff it is therefore hereby considered adjudged and decreed by the court that plaintiff M. E. Heiser herein recover of and from defendant Leonard Woodruff the sum of $164,000.00, together with $113,036.71 as interest thereon, at the rate of 7% per annum from and after the 13th day of May, 1929, total of $277,036.71, with the costs of this suit, for the collection of which said sum and costs execution is hereby awarded. Cost taxed at $1595.00.

Done in open court this 20th day of March, 1939.

GEO. COSGROVE, District Judge.

Judgment entered Mar. 20, 1939. Docketed Mar. 20, 1939. Book CO 1, Page 574. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy. (Seal).

Endorsed: Filed Mar. 20, 1939. R. S. Zimmerman, Clerk, by Francis E. Cross, Deputy Clerk.

Supplement to Proof of Claim of M. E. Heiser.

11 Comes now M. E. Heiser, a creditor, and by this petition would show:

I.

That heretofore in and about July 1939 your petitioner herein filed in the above entitled matter his creditor's claim and proof of debt amounting to $278,631.71. That said claim had prior to the said time been reduced to judgment in favor of claimant and against the bankrupt herein by a judgment duly made, given, rendered, and entered in the District Court of the United States for the Southern District of California, Central Division. That at said time said judgment was final.

II.

That prior to the time when said judgment became final the said bankrupt herein did on or about the 10th day of April, 1939, make a motion in the said court in which the said judgment was rendered for order of said court to vacate and set aside the said judgment; and the parties, including the said bankrupt, having appeared before the said court at a hearing on the said motion, and the matter having been submitted, the same was thereupon denied by order of the said court, duly and regularly made and filed in said action. That said order has become final.

III.

That thereafter on or about the 23d day of August, 1939, P. M. Jackson, as the duly and regularly appointed, qualified and acting trustee in bankruptcy for the Estate of Leonard J. Woodruff, bankrupt, elected to contest and attack said claim, and the judgment of M. E. Heiser against the said Leonard J. Woodruff, bankrupt, upon which it is predicated, and then and there elected the manner in which he desired to attack and contest the same, and the Court wherein he desired to commence the same.

Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson as said Trustee herein presented to this Honorable Court in Bankruptcy his applica-

12 tion for authority and direction to institute in the court where said judgment was rendered, legal action to vacate, set aside and invalidate the said judgment and claim of the said M. E. Heiser against the said bankrupt herein, and for authority to employ counsel to represent him and the bankrupt in said litigation; that on the said day, according to the order of the Court on file herein, there also was filed an application of creditors, other than the said M. E. Heiser, requesting that the said above entitled Court direct the said Trustee to take the said legal steps; that the above entitled Bankruptcy Court, after being fully advised in the matter, approved the said application and election of the said trustee in bankruptcy to contest the said claim and judgment of the said M. E. Heiser. That the above entitled Court then and there made its order directing that the said trustee do so in the court that rendered the said judgment, to-wit: District Court of the United States, Southern District of California, Central Division.

That in said order on file herein the above entitled Bankruptcy Court found that the litigation necessary to test said judgment should be conducted in the State of California where the said judgment was rendered; that in said order on file herein this Honorable Court "further ordered, adjudged, and decreed" "that the trustee P. M. Jackson, be and is hereby authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside and to void the judgment of M. E. Heiser against the bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, said case being No. 7256-C in said Court," and this Honorable Court further ordered "that said trustee be authorized to employ as his counsel in this matter Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelly, of Los Angeles, California." That reference is made to the said order of the above entitled Court in Bankruptcy on file herein.

IV.

That in pursuance of the said Order of this Honorable Bankruptcy Court and its authorization and direction, and in pursuance of his election of the manner and place in

which he desired to contest the said claim of said M. E. Heiser against the said bankrupt, the said trustee
14 P. M. Jackson did employ the services of the said Francis B. Cobb of Los Angeles, California, as his attorney and did pursuant thereto on or about September 11th, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, invalidate and void the claim and judgment of M. E. Heiser against the said bankrupt Leonard J. Woodruff; that in behalf of the bankrupt Leonard J. Woodruff counsel was employed and joined in said petition; that in the said petition and action and proceeding filed by the said trustee herein and joined in by the said Leonard J. Woodruff, bankrupt herein, the said trustee P. M. Jackson claimed, asserted and averred: That the said Court was without jurisdiction as to the defendant Woodruff to enter the said judgment, in that the said trustee herein claimed summons was not properly served; that the Court did not have jurisdiction of the person of the judgment debtor; that the judgment was prematurely entered; that the complaint is defective; that the complaint was barred by laches; that the complaint was barred by the Statute of Limitations; that a fraud was practiced upon the Court with respect to the entry of said judgment was void as against the said trustee in bankruptcy under Section 67 (d) as amended; that the said complaint does not state a cause of action against the said bankrupt Leonard J. Woodruff; that the court erred in opening the case after judgment for the limited purpose of ascertaining values of the property involved to the exclusion of all other offenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and P. M. Jackson, trustee in bankruptcy for the Estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged causes of action and have been prevented from presenting said defense by reason of fraud, accident, surprise and excusable neglect.

That in said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors have no right or privilege of defending or intervening in respect to said judgment, which judgment, said trustee averred he

was informed and believed was based upon fictitious values and was obtained by methods which amount to constructive frauds upon other creditors, and upon him as trustee as the representative of said other creditors; that none of the creditors of the said bankrupt knew prior to the entry of the said judgment that the alleged process had been served: that if the petition of the said trustee be granted he believes, and has been advised by his attorneys that the said claim of M. E. Heiser can be defeated in whole and the creditors of this estate will then receive a larger percentage of their claims; that the judgment entered in the within mentioned case in favor of M. E. Heiser and against Leonard J. Woodruff is in the sum of $278,631.71, plus costs and that the other claims against the above entitled estate, so far as known to the said trustee herein, are approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of said M. E. Heiser is permitted to stand and if the same is without merit, in that the assets of the estate, so far as known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00, and the known claims, including that of the said M. E. Heiser, claimant herein, approximately near one million one hundred thousand dollars; that the said M. E. Heiser, claimant herein, will receive approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors. That in said proceeding the said P. M. Jackson, trustee in said proceeding, further averred under oath:

"Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors, and your affiant (P. M. Jackson, Trustee) as representative of said creditors, and in the event said judgment is set aside the alleged claim of the said M. E. Heiser can be defeated in whole."

An answer by the claimant M. E. Heiser and also by his attorney was filed to the said petitions of the said trustee

herein and of the said Leonard J. Woodruff, bankrupt. That thereafter the trial and hearing on the said petition and cause instituted by the said trustee came before the said Court on the 26th day of September, 1939, the said trustee appearing by his counsel, Francis B. Cobb, and the said bankrupt, Leonard Woodruff, appearing by his counsel, and certain creditors of the bankrupt estate herein appearing by their counsel, and your petitioner herein, M. E. Heiser, appearing by his counsel, and evidence was introduced, that the matter having been argued by the said counsel, and submitted, the said Court rendered judgment in favor of your claimant herein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson, and against the said bankrupt, Leonard Woodruff.

V.

That thereafter on or about the 29th day of September, 1939, the said P. M. Jackson, trustee in bankruptcy herein, appearing by Francis B. Cobb, his attorney, and the said Leonard J. Woodruff, bankrupt herein, appearing by Edward Fitzpatrick and Cobb, Campbell & Kelley his attorneys, being dissatisfied with the said decision, filed an appeal from the said judgment of the District Court of the United States for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District pursuant to Rule 73, subdivisions (a) and (b) of the Rules of Civil Procedure and Judicial Code Sec. 128 (a), 28 U.S.C.A. 225 (a); Rules of Civil Procedure for District Courts, Rule 55 (a), (b) (2), 28 U.S.C.A. following Section 723c; that briefs were submitted by the said trustee herein and the said Leonard J. Woodruff, bankrupt, as appellants, and claimant Heiser, herein as appellee.

That the said matter came on regularly for hearing before the said United States Circuit Court of Appeals for the Ninth Circuit, and after argument of counsel for the said parties the same was submitted for decision. That thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit made and filed its decision and order affirming the said judgment; that a certified printed copy of the said decision and opinion of the United States Circuit Court of

Appeals for the Ninth Circuit, as furnished by the Clerk of the said court, is attached hereto and marked Exhibit A, and by this reference is made a part hereof. That said opinion and decision is reported in 111 F. 2d 310. That on or about the 31st day of May, 1940, the said United States Circuit Court of Appeals issued its mandate pursuant to the said decision, and the same was duly and regularly filed in said court.

17 That in the matter of Jackson and Woodruff vs. Heiser, No. 9356 in the Circuit Court of Appeals in and for the Ninth Circuit, the appeal instituted by the said P. M. Jackson, trustee herein, and the bankrupt herein, Leonard J. Woodruff, from the decision of the said United States District Court for the Southern District of California, Central Division, in favor of M. E. Heiser, claimant herein, and against the said P. M. Jackson, trustee, and the said bankrupt in the proceeding commenced by the said P. M. Jackson, trustee, and joined in by the said Leonard J. Woodruff, bankrupt herein, in the said District Court for the Southern District of California, the said United States Circuit Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things that, to wit:

1. The action of the trustee and the said Leonard J. Woodruff, bankrupt, in the United States District Court for the Southern District of California, was in effect an independent action or proceeding; that as such the decision rendered therein was a final decision within the meaning of 128 (a) Judicial Code, 28 U.S.C.A. 225 (a), and was therefore appealable.

2. (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition the defendant Woodruff appeared in the said action and participated therein, waived service and voluntarily submitted himself to the jurisdiction of the said court.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. Complaint did state a cause of action.

7. Complaint was not otherwise defective.

8. Complaint did not show that the action was barred.

9. Neither the trustee Jackson nor the bankrupt Woodruff were prevented from presenting defense by reason of fraud, accident, surprise or excusable neglect.

10. That there was no abuse of its discretion by the Court.

11. That the Court did not err.

12. That the order of the District Court for the Southern District of California is affirmed, which order denied the attack upon the said judgment and claim, in the proceeding commenced in the said court by the said trustee P. M. Jackson, and joined in by the said bankrupt Leonard J. Woodruff and decided in favor of said claimant M. E. Heiser.

VI.

That no motion for rehearing of the said cause has been filed in the United States Circuit Court of Appeal in the Ninth Circuit and that time, for the filing of same has expired. That no appeal has been taken from the said judgment of the said United States Circuit Court of Appeals for the Ninth Circuit and no writ obtained from the Supreme Court of the United States in the said cause. That time within which to have the said cause reviewed in the Supreme Court of the United States has expired. That the said judgment of the said District Court of the United States for the Southern District of California in favor of M. E. Heiser, claimant herein, and against Leonard J. Woodruff, bankrupt herein, in the amount of $278,031.71 has become final.

That the decision of the District Court of the United States for the Southern District of California in favor of claimant herein, M. E. Heiser, and against P. M. Jackson, trustee herein, and Leonard J. Woodruff, bankrupt herein, upon the said action or proceeding instituted and filed in said court by P. M. Jackson, trustee herein, pursuant to

his election and the order of the above entitled Court in Bankruptcy to vacate, set aside, invalidate and void said judgment, has become final.

VII.

That the said trustee P. M. Jackson, with the authority and instruction of the Bankruptcy Court herein, elected to and did contest and attack the said claim and judgment of M. E. Heiser herein in the court that rendered the said judgment, the District Court of the United States, for the Southern District of California, Central Division; that the result of said contest and attack was a decision in favor of M. E. Heiser and against the said trustee herein, which decision was appealed by the said trustee to the
19 United States Circuit Court of Appeals for the Ninth Circuit, and by said Court affirmed. That said decision is final. That said decison is res adjudicata as to the contents of said judgment for $278,634.71 filed herein and as to the claim of said M. E. Heiser, and as to the creditors herein, the trustee herein, and the bankrupt.

VIII.

That the present address of your claimant is, M. E. Heiser, 566-47th Avenue, San Francisco, California, and the name and address of your claimant's attorneys is, M. S. Meyberg and Leonard J. Meyberg, 403 Lane Mortgage Building, 208 West Eighth Street, Los Angeles. That claimant M. E. Heiser hereby revokes all previous letters and powers of attorney and attaches hereto Letter of Attorney to the said M. S. Meyberg and Leonard J. Meyberg duly executed. That the foregoing revocation is made with the knowledge and consent of the attorneys to whom said previous letters were directed.

Wherfore, your petitioner, claimant and creditor herein asks this Honorable Court to allow the filing of this petition as supplement to his proof of debt and claim on file herein to be attached thereto and become a part thereof.

Signed: M. E. Heiser, Petitioner

Subscribed and sworn to before me this 31st day of July, 1940. Paul Joseph, Notary Public in and for the

County of Los Angeles, State of California. My commission expires July 2, 1944.

M. S. MEYBERG and LEONARD J. MEYBERG
by: M. S. MEYBERG, Attorneys for petitioner.
M. E. Heiser.

Filed Aug. 5, 1940. Geo. F. Clark, Referee.

Letter of Attorney

To M. S. Meyberg and L. J. Meyberg, Room 403 Land Mortgage Building, 208 West Eighth Street, Los Angeles, California:

20 I, M. E. Heiser the claimant mentined in the foregoing claim, do hereby authorize you, or any one of you to attend the meeting or meetings of creditors of the Bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified *in* said Court in said matter, or at such other place and time as may be appointed by the Court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the Acts of Congress relating to Bankruptcy; and in the choice of trustee or trustees of the estate of the said Bankrupt, and for me to assent and vote at any other meeting or meetings of creditors or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also, to accept any composition proposed by said Bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In Witness Whereof, I have hereunto signed my name and affixed my seal the 31st day of July, A. D. 1940.

Signed: M. E. HEISER.

Signed, Sealed and Delivered in the Presence of R Stephens.

Acknowledged before me, this 31st day of July, 1940 Paul Joseph, Notary Public in and for said County and State. My commission Expires July 2, 1944. (Seal).

[The opinion of the Circuit Court of Appeals of the Ninth Circuit, P. M. Jackson, Trustee, et al. vs. M. E. Heiser, No 9356, Apr. 30, 1940, appears at page —.]

Application of Creditors for an Order Directing Trustee to Attack Judgment.

21 Come now your petitioners, C. F. Dillard, Waldo Duncan, Sale Coffey, Lon Peavy, E. L. Franklin, F. Dillard, Carter County Title Co., Preston Dawson, Cortez Craddock, Florine Henderson, R. L. Davis, Ollie Anderton, Dr. Walter Johnson, Cain Miller, Bill F. Womack, C. F. Stinnett, Ben Sutton, W. F. Lambert, Paul Newman, Bill Newman, A. D. Davis, Ben Darling, R. G. Shrader, W. W. Shrader, H. B. Shrader, H. W. Welch, Willie May Woodruff, Ida Belle Woodruff, Howard Woodruff and Marguerite Woodruff, by their attorney W. W. Potter, and states that there has been filed in this cause a statement of bankruptcy with reference to the claim of M. E. Heiser wherein said bankrupt alleges that said claim is based on an erroneous, unjust and void judgment and prays that the Trustee be directed to proceed to attack said judgment and these applicants, having been further advised that there was no merit in the claim made by said M. E. Heiser upon which the judgment was rendered against the bankrupt, Leonard L. Woodruff, in the sum of $278,621.71 in the United States District Court for the Southern District of California in case No. 7256; that said claim if allowed to stand will materially affect the rights of these applicants and creditors and wherefore these applicants further state that the date of said judgment above referred to is March 20, 1939 and that under the rules of civil procedure, being rule number 60B, said judgment, if attack, must be attacked within six months.

Wherefore, said applicants pray that the Trustee deny the claim of the said M. E. Heiser and that he be directed to proceed to attack said judgment and take whatever steps may be necessary to protect the rights of these creditors in the premises.

W. W. PORTER,
Attorney for creditors above named.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

Application of Trustee for Authority to Employ Counsel and to Institute Legal Action to Vacate and Set Aside Judgment of M. E. Heiser, Against Bankrupt.

22 Comes now P. M. Jackson, trustee and shows to the court that he is informed that a judgment was rendered in the United States District Court, in and for the Southern District of California, Central Division, in which case M. E. Heiser was plaintiff and the bankrupt, Leonard J. Woodruff was defendant, same being case No. 7256-C, in said court, said judgment being for the sum of $278,621.71. That said judgment standing alone represents a greater part of the outstanding claims against said bankrupt. That the bankrupt claims that said judgment is wholly without merit and that if the matters therein involved had been fairly presented to the court that no judgment would have been rendered. The bankrupt's statement with reference to said claim is hereto attached and referred to and made a part of this application.

Your trustee further shows to the court that practically all the creditors of this bankrupt other than M. E. Heiser have also applied to this court for an order directing your trustee to take such legal steps as may be necessary to vacate and set aside said judgment, and he says that the other creditors are vitally interested in said matter for the reason that if said judgment is vacated the other creditors will probably receive a full and complete settlement of their debts and claims against said bankrupt, and that while said judgment is adjudged to be a valid claim that it will greatly reduce the amount that the other creditors will receive out of said bankrupt estate.

Now, your trustee says that based upon his information he is of the opinion that he should be permitted, authorized and directed to undertake to vacate and set aside said judgment and to have said claim of M. E. Heiser denied, if the facts *so* justify.

Your trustee further shows to the court that he is informed and therefore alleges the truth to be that in order to vacate said judgment that action must be taken in the courts of California where said judgment was rendered, and for said reason he should be permitted, if this court directs him, to take legal action to vacate said judgment, to employ a reputable and capable attorney in California and in Los Angeles where said judgment was rendered. That
23 he is informed that one Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelly, Attorneys of Los Angeles, California, is a reputable and capable attorney, experienced in the practice of law in California, and so far as your trustee knows that said Francis E. Cobb is not disqualified and represents no interest contrary to your trustee in this matter. That he is informed that the said Frances E. Cobb has, in the past, represented the bankrupt Leonard J. Woodruff, in certain matters and that he possibly has in the past also represented the wife of the bankrupt herein, but he is informed that said Cobb does not now represent either the bankrupt or his wife, and that he represents no person or matters that would conflict with his duty in representing this trustee in this matter.

Wherefore, your trustee prays the court to make and enter an order directing him the manner in which he shall proceed in this matter, and in the event the court directs the trustee herein to take such legal steps as may be necessary to vacate or set aside the judgment of the said M. E. Heiser hereinbefore referred to, that the court also authorize the trustee to employ Frances B. Cobb of Los Angeles, California, as attorney for the trustee for this particular matter only.

P. M. JACKSON.

Verified.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

Bankrupt's Statement With Reference to Claim of M. E. Heiser.

Comes now the bankrupt, Leonard J. Woodruff, and with reference to the claim of M. E. Heiser, filed herein and based upon the judgment rendered in favor of said M. E. Heiser by the United States District Court in and for the Southern District of California, Central Division in the case wherein M. E. Heiser was plaintiff and this bankrupt and others were defendants, and being Case No. 7256-C in said court, and said judgment being for the sum of $278,621.71, respectfully represents and shows:

I.

At the time of the filing of said suit by the said M. E. Heiser, the bankrupt was not indebted to him in any sum and at the time of the rendition of said judgment the bankrupt was not indebted to said M. E. Heiser. The material allegations of the complaint filed in said case are untrue and bankrupt did not participate in any scheme or conspiracy to defraud said M. E. Heiser of raw gems of the value of $164,000.00 or any other sums; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

II.

A copy of the complaint filed in said case is hereto attached, marked Exhibit "A"; a copy of the judgment rendered is hereto attached, marked Exhibit "B"; a copy of bankrupt's motion to vacate said judgment is hereto attached marked Exhibit "C"; copy of the order of the Court on bankrupt's motion to vacate judgment is hereto attached, marked Exhibit "D".

III.

Bankrupt says that no personal service of summons was had upon him in said action. On the 21st day of January, 1939, a summons in said action was left at the

summer residence of the bankrupt's wife at 2446 Inverness Avenue, Los Angeles, California; at that time bankrupt was not in Los Angeles, California, and did not return to Los Angeles, California, until February 26 or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939, and as soon as the bankrupt learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court refused to vacate said judgment and permit the bankrupt to defend same on its merits, as shown by copy of order attached hereto as Exhibit "D". If the bankrupt had been permitted to defend said action on its merits, he could have defeated said action and the action of the court in refusing the bankrupt permission to defend said action on its merits after timely application denied the bankrupt relief to which he was entitled in law and in equity. Bankrupt now advises the trustee that said judgment is without merit and he believes if said action is defended on its merits that a judgment will be rendered therein in favor of the bankrupt. Bankrupt can produce ample, competent and credible evidence to prove that said judgment is without merit and unjust.

IV.

Bankrupt says that a hearing was had in said court under the order of June 8, 1939, at which hearing the Court heard evidence as to the value of the property which the plaintiff claims the bankrupt converted to his own use and benefit and that on the 20th day of June, 1939, the Court announced from the bench that the judgment would be permitted to stand; but said order has not been reduced to writing and filed in said case; that the Court erred in permitting said judgment to stand as to value for the reason that the raw gems described in plaintiff's complaint were at no time of the value of $164,000.00 or any comparable value; that it was established by competent and
26 credible evidence that said raw gems do not have any such value and the Court erred in rendering judgment for the plaintiff in such sum.

V.

Bankrupt has in his possession all of the so-called raw gems which he purchased at the sheriff's sale had in pursuance of the judgment rendered in favor of bankrupt and against the Golden State Gem Company of Nevada in Cause No. 276,469 in the Superior Court of Los Angeles, California, and said so-called raw gems can be appraised by competent appraisers for the purpose of ascertaining the value thereof. Bankrupt says that he has had the same appraised by competent appraisers who will testify that said raw gems have an inconsequential value. Bankrupt was the highest bidder for said raw gems at said sheriff's sale and bought the same for the sum of $1,000.00 when there were a number of other bidders present and bidding on said socalled raw gems.

VI.

Bankrupt says that said judgment is excessive to the extent of the amount of interest included therein, to-wit: the sum of $113,036.71, because said judgment is a judgment based upon fraud and cannot draw interest except from the date of rendition thereof and said judgment is erroneous and void to the extent of the amount of the interest and if the same is not vacated and set aside and a trial permitted upon the merits of the controversy, same should be reduced in the amount of the interest included in said judgment.

VII.

Bankrupt says that he has been informed by reputable attorneys that the complaint filed in said action does not state a cause of action and that said complaint shows upon its *fact* that if the plaintiff *ever* had any cause of action the same was barred by the applicable statutes of limitation of California before the filing thereof; that said judgment is void for the further reason it does not specify the cause of action upon which judgment was rendered, there being three causes of action stated in the complaint filed in said case.

VIII.

Bankrupt says he is informed by reputable attorneys that all of the matters and things herein set

out and such other matters and things as may be available in an effort to defeat said judgment can be presented by the Trustee under Rule 60-B of the new rules of civil procedure of the United States District Court and under the statutes and decisions of the Supreme Court of the State of Californja.

Therefore bankrupt says that the claim of said M. E. Heiser should be denied and the Trustee should be directed to proceed to attack said judgment in an effort to secure a trial of said cause up on its merits.

.....

Bankrupt

.....

Attorneys for Bankrupt.

United States of America, Eastern District of Oklahoma, county of Carter. ss:.

I, Leonard J. Woodruff, the bankrupt above named, do hereby make solemn oath that the statements contained in the above statement with reference to the claim of M. E. Heiser are true according to the best of my knowledge, information and belief.

.....

Subscribed and sworn to before me, this ..... day of August, 1939.

.....

Notary Public.

My commission expires:

[Exhibits to Bankrupt's Statement. Complaint, etc. in Case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff, et al.]

[Exhibit A, complaint, is identical with exhibit B to the objections of Willie Mae Woodruff, page 45.]

[Exhibit B, judgment, is identical with exhibit A to the proof of claim of M. E. Heiser, page 10.]

Exhibit C.

Motion to Set Aside Default and Default Judgment.

Grounds:

27a "1. That said default and default judgment were entered prematurely and without authority of law."

"2. That said default and default judgment through the surprise of this defendant, his inadvertance, mistake and excusable neglect in that he was not actually notified that his son was served with process in this case until after the within default judgment was entered."

"3. That under the law when for any cause, process has not been personally served as in this case, the court may allow such defendant when justice demands, to answer to the merits of the original action.

"Said motion will be based upon this notice, the affidavit of defendant, Leonard Woodruff, the further affidavit of Edward Fitzpatrick one of the attorneys of record and affidavit of Howard Woodruff, Eugene Aycox and William DeVotot, the verified answer of defendant Leonard Woodruff record and files in the above entitled action and the following other court proceedings; case 5587-J United States District Court; Case 13393 J in Bankruptcy, United States Court; case 276469 in the Superior Court of Los Angeles County, California.

Dated March 25th, 1939."

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for defendant Woodruff.

"Filed March 29, 1939."

[Exhibit D, order on motion to vacate judgment, is identical with exhibit C-1 to the objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, page 75.]

Order Authorizing and Directing Trustee to Institute Legal Action to Vacate and Set Aside Judgment of M. E. Heiser Against Bankrupt.

28 Now on this 23d day of August, 1939, there having been presented to the court the application of the trustee for authority to institute legal action to vacate and set aside judgment of M. E. Heiser against bankrupt and for authority to employ counsel to represent said bankrupt in said matter, and there also being presented an application of creditors other than M. E. Heiser, requesting that this court direct the trustee to take said legal steps, and the court after being fully advised in the matter, finds that a default judgment was rendered in the United States District Court in and for the Southern District of California, Central Division, in which M. E. Heiser was plaintiff and the bankrupt, Leonard J. Woodruff, was defendant, same being case No. 7256-C in said court, and said judgment being for the sum of $278,621.71.

The court finds that said judgment represents a large part of indebtedness of the bankrupt herein and that said judgment being rendered by default, that the matters and things that the bankrupt claims to be a complete defense to said action has never been presented to the court, and in the judgment of this court the merits of said matter and legality of said judgment should be inquired into by court of proper jurisdiction.

The court further finds that the time within which trustee may legally attack said judgment will expire on or about September 20, 1939, and for said reasons, prompt and immediate steps should be taken to test the legality of said judgment, and that said trustee should be ordered and directed to take such legal steps as may be proper to vacate, set aside or to avoid said judgment.

The court further finds that the litigation necessary to test said judgment will necessarily have to be conducted in the state of California where said judgment was rendered and that the trustee should be authorized to employ a capable and reputable attorney who is familiar with the practice in the state of California and who is located in Los Angeles where said judgment was rendered in order

to minimize the expense as much as possible, and said trustee has applied to this court for authority to em-
29 ploy Frances B. Cobb, attorney of law of Los Angeles, who is reputed to be a capable and experienced practitioner of the law in California, and the court finds that said Francis B. Cobb is not disqualified to represent said trustee and that he represents no interest that would conflict with his duties for said trustee in this matter, and that he should be employed as attorney for the trustee in this matter.

It Is Therefore Ordered, Adjudged and Decreed by the Court that the trustee, P. M. Jackson, be and is hereby authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside and to avoid the judgment of M. E. Heiser against the bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, said case being No. 725-C in said court.

It is the further order and judgment of the court that said trustee be authorized to employ as his counsel in this matter Frances B. Cobb, a member of the firm of Cobb, Campbell, & Kelly, attorneys of Los Angeles, California.

GEO. F. CLARK,
Referee in Bankrupty.

Filed Aug. 23, 1939. Geo. F. Clark, Referee.

[Order Staying Proceedings etc.]

30 Now on this the 26th day of August, 1940, at Ardmore comes on for hearing the application of the bankrupt for stay of administration proceedings and the proposition of the bankrupt for arrangement of unsecured debts, after due notice to all parties, and the bankrupt appearing in person and by his attorneys, Champion, Champion & Fischl, and M. E. Heiser appearing by his attorneys, Rupert B. Turnbull, Leonard J. Meyberg and T. G. Gibson, and the creditors herein refererd to as C. F. Dillard et al, appearing by their attorney, W. W. Potter, and the trustee, P. M. Jackson, appearing in person and

by his attorney, Ezra Dyer, and the creditor R. F. McCrory appearing by his attorney, J. B. Moore, the court proceeds to hear said matter including objections of M. E. Heiser and Reynolds and McClain this day filed and after having heard the same upon oral and documentary evidence, and being advised in the premises;

It is Ordered, Adjudged and Decreed:

I.

That the application for stay of administration proceedings be and the same is hereby granted and the administration in bankruptcy of the estate of the debtor is stayed until further order of the court; conditioned and provided, however, that the trustee P. M. Jackson, shall remain as trustee in possession of the property of the bankrupt and shall keep and maintain the control and possession thereof and shall exercise the powers and duties of a trustee with respect thereto, having the right to lease and rent the same, collect the incomee and revenue therefrom and operate said property for the best interests of the estate,
31 subject at all times to the approval of the referee. The trustee shall continue to prosecute the litigation in California.

II.

That the application of the creditor M. E. Heiser to file objections to the so-called family claims; being the claims of Ida Belle Woodruff, Willie Mae Woodruff, Howard Woodruff, Leonard Woodruff, Jr., Marguerite Woodruff, Herman Woodruff and Robert Beveridge, is hereby granted, it appearing to the Referee that said creditor heretofore filed a demand upon the Trustee to contest said claims but that the Trustee has been prevented from making such contest by reason of the appeal on the question of jurisdiction, which appeal was prosecuted by the creditor Heiser. The trustee at this time evidences his willingness to make such contest but the Court finds that because of the stay of administration proceedings it is not the duty of the trustee to make such contest at this time. The Court further finds that any contest of claims at this time should be made by the debtor or a creditor.

III.

That any other creditor be and is hereby granted permission to file contest of any claim pending herein.

IV.

That the debtor be and is hereby granted permission to object to and contest the claim of any creditor pending herein.

V.

That the only expenses which shall be incurred herein pending determination of said proposition for arrangement of debts shall be the necessary expenses and compensation of the trustee and the referee, including expenses of California litigation, and that all expenses of contesting claims and attorneys fees shall be borne by the contesting parties and shall in no event become allowable claims herein or charges against the property of the debtor or bankrupt.

VI.

32 That objections to claims shall be filed herein within fifteen days from this date.

VII.

That this proceeding and all matters set for hearing today be and the same are hereby continued for further hearing until Monday, October 14, 1940, at 9 o'clock A. M. in the District Court room at Ardmore, Oklahoma and that all protests and objections to claims filed herein be and are set for hearing on that date.

Signed at McAlester, in the Eastern District of Oklahoma, on this the 30 day of August, 1940.

GEO. E. CLARK, Referee in Bankruptcy.

Filed Aug. 30, 1940. George E. Clark, Referee.

Objections to the Claim of Willie Mae Woodruff as Filed for $422,728.58.

33 Comes now, M. E. Heiser, a creditor of Leonard J. Woodruff, having on file a claim in the sum of $278,000.00, based upon a final judgment, and after de-

mand in writing duly made on March 4, 1940, upon the Trustee, P. M. Jackson, demanding filing of written objections to the claim of Willie M. Woodruff, the wife of the bankrupt, and after the failure of the Trustee to file any objection to said claim, the said M. E. Heiser having made his motion in open court in the presence of the Trustee P. M. Jackson and his counsel, and in the presence of the counsel of the bankrupt and other creditors, for an order permitting said M. E. Heiser to file objections, and the Court having made its written Order permitting M. E. Heiser to file objections to the claim of Willie M Woodruff;

Now, Therefore, objection is hereby made by M. E. Heiser for the benefit of all other creditors of the estate of Leonard J. Woodruff, to the said claim of Willie May Woodruff as filed herein, for the sum of $422,728.58, and for cause of objection your objector alleges that he is informed and believes and therefore alleges:

I:

That Leonard J. Woodruff and the estate of Leonard J. Woodruff, a bankrupt, is not indebted to Willie M. Woodruff in any sum or at all, and no obligation enforceable or otherwise exists in favor of the claim of Willie M Woodruff.

II:

Your objector alleges that at all the times mentioned in the claim of Willie May Woodruff and that all the times mentioned in the exhibit which is attached thereto, the bankrupt, Leonard J. Woodruff, and Willie May Woodruff were husband and wife, living together and having their home in the City of Los Angeles, County of Los Angeles, State of California; that the claim asserted by the
34 claimant and each and all thereof, is barred by the Statute of Limitations, that is to say, by Sections 337, 338, 339, 340 and 341 of the Code of Civil Procedure of the State of California.

Your objector alleges that during all of the times mentioned in the claim and at all times in respect thereto, that it was provided by the laws of the State of California in full force and effect then and now, that actions on any contract found in any instrument in writing must be com-

menced within four years; that it was and is provided by Section 337 of the Code of Civil Procedure of the State of California at all of said times that any action to recover upon a book account, whether consisting of one or more entries, or upon an account stated, or upon a balance due upon a mutual, open and current account, shall be barred within four years; that it was and is provided by the laws of the State of California that commencement of an action is barred within three years where the action is based upon a liability created by statute, upon an action for trespass upon or injury to real property, upon an action for taking, detaining, or injuring any goods or chattels, including action for the specific recovery of personal property, for an action for relief on the ground of fraud or mistake; that it was and is so provided by the laws of the State of California that any action is barred and cannot be prosecuted after the expiration of two years where said cause of action is based upon a contract, obligation or liability not founded upon an instrument in writing; it is provided that no action may be maintained after one year if said action is based upon statute, for penalty or forfeiture; that it was and is provided by Section 336 of the Code of Civil Procedure of the State of California that no action may be maintained after five years where said action is for mesne profits of real property.

Your objector alleges that more than the statutory period has expired from the time of the alleged obligations and the due dates thereof, and the date of the adjudication of the bankrupt herein as the same occurred on the 5th day of July, 1939.

III.

35 Your objector alleges that at all the times mentioned in claimant's claim, the bankrupt and the claimant were husband and wife, and as such had their home, domicile and were actually residing in the city of Los Angeles, County of Los Angeles, and State of California; that during all of the times mentioned in the claimant's claim it was and is the law of the State of California, that all property acquired by husband and wife other than that received by gift, devise or bequest is the community property of the husband and wife and as such

is under the control of the husband, and all community property is amenable to the payment of the husband's debts.

Your objector alleges that all of the property referred to in the claimant's claim was the community property of the claimant and the bankrupt, that the same was under the control of the bankrupt, not only by operation of law, but was according to the sworn claim of the wife, claimant herein, consented to be controlled by the bankrupt, the husband of the claimant.

Your objector alleges that any sums of money or property collected by Leonard J. Woodruff was community property and that he did, with the knowledge and consent of his wife, the claimant, engage in the sale and speculation of said property and monies; that Leonard J. Woodruff, with the full knowledge and consent of his wife, the claimant, opened up trading accounts in his own and fictitious names with various stock brokers in the city of Los Angeles, California, particularly with Slaughter, Anderson, and Fox, Slaughter and Fox, and Drake, Riley and Thomas, and did engage in speculative transactions in the market, by and through which the bankrupt lost, or claimed to have lost, sums in excess of $500,000.00.

That during all of said times the claimant, Willie May Woodruff, was the wife of the bankrupt, and knew and participated in the use and disposition of such community funds; knew and realized that said funds might be either pyramided into larger sums upon the successful speculation of said funds, and realized that otherwise the same might be totally lost and destroyed by reason of the usual vicissitudes of the stock market and the trading thereon.

36. Your objector alleges that at no time did Leonard J. Woodruff, the husband, guarantee in writing or otherwise the successful gambling and speculation of such community funds or of any funds claimed by the claimant to be her separate estate, and objector alleges that said funds referred to by the claimant were entirely lost in the said speculative and gambling transactions engaged in by the bankrupt and the claimant.

IV.

Objector hereby refers to the matters and things hereinbefore set forth in this objection, and alleges that by reason of such facts, the claimant, Willie May Woodruff, as the wife of the bankrupt, should in any accounting between herself and her bankrupt husband, Leonard J. Woodruff, be estopped to assert her claim herein that she is entitled to an accounting in her favor and have any claim allowed in her favor on a parity with the other unsecured creditors of the bankrupt, and objector alleges and avers that by reason of the said foregoing facts as hereinbefore set forth the claimant is estopped and enjoined from claiming or having a claim allowed on a parity with other unsecured creditors of the bankrupt, and that the claim of Winnie May Woodruff, if one exists and one is found in her favor on an accounting between the claimant wife, and the bankrupt, should and ought to be subordinated to and made junior to the claims of other unsecured creditors of Leonard J. Woodruff, the bankrupt.

V.

Your objector alleges that the said claim of Winnie May Woodruff is not a provable or allowable claim herein and that the same should be disallowed.

VI.

Your objector alleges that during all of the times referred to in the claim of Winnie May Woodruff, it was and is the law of the State of California that community property of the husband and wife may be divided in no manner contrary to law of the State of California unless an agreement has been made and exists in writing between the parties. Your objector alleges that no such agreement in writing has ever been made or exists between the claimant and the bankrupt at any of said times bankrupt and claimant were husband and wife.

VII.

37 Your objector alleges that the alleged claim of the claimant is barred by the Statutes of Limitation of the State of Oklahoma.

VIII:

Your objector is informed and believes and therefore alleges that the bankrupt, Leonard J. Woodruff, did not keep books in connection with his business or at all; that during the times mentioned in the claim of the claimant, Winnie May Woodruff, bankrupt was engaged in extensive business and commercial operations, particularly, first, the owning and operating of four antique stores in Los Angeles, California, known as the Woodruff Antique Stores, consisting of an antique store, oriental store, and Indian store, and an art gallery and medieval Arms store; that the operation of said business was extensive and said stores contained articles in excess in number of 25,000.

That during the said times mentioned in the claim of Willie May Woodruff, the bankrupt, Leonard J. Woodruff, was engaged in the cattle and oil business, and that from said oil business the bankrupt received in money from royalties the sum of approximately $5,000,000.00; that during said times the bankrupt was engaged in the business of buying and selling semi-precious gems, particularly sapphires, zircons, and opals, and that in said business, attempted to corner and monopolize the semi-precious gem business of the United States, and his activities in that regard were very extensive, and that the said bankrupt incorporated and caused to be incorporated corporations not only under the laws of the State of California but under the laws of the State of Nevada for such purposes.

That the bankrupt also during the said times aforesaid engaged in the business of lender of money in large sums to various and numerous persons in the State of California that in connection with said businesses, the bankrupt did not keep books or papers from which his financial condition could be ascertained.

That all of such facts were known to the claimant, Winnie May Woodruff, who was during all of said times the wife of the bankrupt and had knowledge of the activities, commercial, industrial, and personal, of the bankrupt.

38 That during the period mentioned in the said claim of Winnie May Woodruff, the extensive business of the bankrupt resulted in extensive litigation, and in the

County of Los Angeles, California, alone, Leonard J. Woodruff was a party to litigation in actions instituted by or against him, numbering approximately seventy-five independent lawsuits.

That the United States Government during said time accused the bankrupt of not having made and filed reports required to be made under the laws of the United States concerning the income and income tax of the bankrupt and his wife, Winnie May Woodruff, and assessed a tax in a sum in excess of $125,000.

IX.

Objector is informed and believes and therefore alleges that any conveyances made actually or in form by Leonard J. Woodruff to the claimant, Winnie May Woodruff, or any transactions made by him in the name of the claimant, were made for the purpose of concealing from the United States of America, Income Tax Department, the nature and extent of the business done, the income of, the property of, the said Leonard J. Woodruff, and that the said Leonard J. Woodruff, with the full knowledge and consent of the claimant, did from time to time do business, and operate, under fictitious names and make transfers to the claimant for the sole and only reason of concealing from the United States Government and the Income Tax Department thereof, and during a portion of the time from his creditor, M. L. Heiser, the nature and extent of the actual holdings and income of Leonard J. Woodruff; and that during all of said times, the claimant knew the nature and extent of the business of the bankrupt, her husband, and knew of the nature and character and extent of the transfers, and the method and manner in which the bankrupt operated and did business, and became a party thereto, expressly for the purpose of defrauding the United States Government of the just income taxes due from the bankrupt and the claimant, and the creditors of Leonard J. Woodruff, including your objector, and that by reason of the acts, conduct and participation of the claimant, in and to said transactions, she is and ought to be estopped and restrained from now asserting claim as a party with the other creditors of the bankrupt, including your objector.

X.

39 Your objector is informed and believes and therefore alleges that the bankrupt, Leonard J. Woodruff, during the times mentioned in the claim of Willie May Woodruff, was engaged in acquiring so-called "hot" or illegally acquired jewelry and gems and was acting as a "fence" or "go-between" for the sale, disposition, and mutilation of gems and jewelry; that the said bankrupt was engaged in the business of transactions with certain aliens engaged in the smuggling from foreign countries into the United States of gems, jewelry, semi-precious stones, and the said transactions were being engaged in by such aliens participating with Leonard J. Woodruff, the bankrupt, for the purpose of avoiding the payment of customs and duties then required by law to be paid for entrance into the United States of such gems, jewelry, and semi precious stones.

That the claimant, Winnie May Woodruff, as the wife of the bankrupt, acquired a knowledge of such transactions, and threatened unless paid by transfers to be made to her of valuable properties, to expose to the authorities, including the United States Government, the nature and extent thereof.

That pursuant to such threats and without any legal consideration therefor, the bankrupt, Leonard J. Woodruff, conveyed and caused to be conveyed to the claimant, Willie May Woodruff, his wife, valuable properties, including the following—A property on Inverness Avenue, Los Angeles, California, of the then value and for which the bankrupt paid the sum of $97,000.00, which property, the claimant, Willie May Woodruff, now holds of record in her own name and claims to be the owner thereof, but which property in truth and in fact is the property of the bankrupt, Leonard J. Woodruff, and is the property of this estate and which has not been reduced to possession by the Trustee herein, and which property the claimant, Willie May Woodruff, claims adversely to the estate of the bankrupt.

That no credit has been given by the claimant for said $97,000.00 against the alleged indebtedness of the bankrupt

to the claimant; that without consideration and pursuant to and in accordance with the facts as hereinbefore alleged, the bankrupt conveyed to the claimant, and the claimant accepted, a property situated at the southwest corner of Ivar Street and Hollywood Boulevard, Los Angeles, California, of the value approximately of $100,000.00; that pursuant to the aforesaid facts and situation as hereinbefore described, the bankrupt, Leonard J. Woodruff, delivered to the claimant without consideration a quantity of antiques and archaeological exhibits, of both Panamian and early Central America Mayan and Aztec civilizations, of a value of approximately $50,000.00; that no credit has been given by the claimant for said conveyance for the value thereof as against the alleged indebtedness due her by the bankrupt.

XI.

Objector alleges that in the year ..... in the State of California, the bankrupt, Leonard J. Woodruff, wrongfully and fraudulently converted property of your objector, consisting of zircons, opals, and sapphires and semi-precious stones, and that the value of the damage done by said bankrupt, Leonard J. Woodruff, to the claimant, is represented by and evidenced by the judgment for $278,000.00, to-wit, the final judgment in favor of M. E. Heiser, as plaintiff, and Leonard J. Woodruff and P. M. Jackson, as Trustee, in bankruptcy, of Woodruff, defendants in the District Court of the United States for the Southern District of California, and affirmed on appeal by the Circuit Court of the United States for the Ninth Circuit.

That during the years from and after the date of the conversion of said gems by the bankrupt, the said Leonard J. Woodruff was constantly apprehensive of attachment which M. E. Heiser during said period might have sought and obtained in the litigation which followed said conversion and which resulted in the judgment aforesaid.

That Leonard J. Woodruff conveyed for the purpose of concealing his property and for the purpose of hindering his creditors, including your objector, M. E. Heiser, large sums of money and property to his wife, Willie May Wood-

ruff, without consideration; that the said conveyances so made did in fact hinder and delay and defraud the creditors of Leonard J. Woodruff, including your objector, M. E. Heiser, and the unsecured creditors of the bankrupt were unable to and have been unable to up to this time, collect their just claims against the bankrupt.

That the claimant, Willie May Woodruff, at all of said periods of time, knew the conditions as aforesaid, and accepted said conveyances of money and property with such knowledge and for the purpose of concealing the property in her name, and that said claimant did in fact conceal said property, including the properties hereinbefore last set forth, and now holds the same allegedly adversely to the bankrupt's estate and to the Trustee thereof, and has not accounted to the Trustee under the estate of the bankrupt or the Trustee therefor. That the value of said properties so conveyed to her during the said period aforesaid and which she now holds are in excess of a value of $400,000.00.

41 That said conveyances were and are concealments and secretings of the bankrupt's properties, that the same are held in trust by Willie May Woodruff and are in truth and in fact the property of the bankrupt and have not been accounted for by the said claimant nor surrendered by the said claimant to the Trustee.

Wherefore, objector prays that upon hearing of these objections upon said claim, an order may be made by the Court disallowing said claim in its entirety.

M. E. HEISER, Objector.

Filed Sept. 10, 1943. George F. Clark, Referee.

State of California, County of Los Angeles. ss.

M. E. HEISER, being by me first duly sworn, deposes and says:

That he is the objector in the above entitled action; that he has read the foregoing objections and *knows* the contents thereof; and that the same is true of his own knowledge, except as to those matters which are therein stated upon in-

formation or belief, and as to those matters that he believes it to be true.

M. E. Heiser.

Subscribed and sworn to before me this 7 Day of September, 1940. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal).

Protest and Objections of Willie Mae Woodruff, Creditor of Leonard J. Woodruff, Debtor, to the Allowance and Approval, in Whole or in Part, of the Claim of M. E. Heiser.

42 Comes now the creditor, Willie Mae Woodruff, and protests and objects to the allowance in whole or in part of the claim of M. E. Heiser filed herein for the following reasons, to-wit:

I.

Said claim is based, predicated and founded upon a purported judgment rendered by the United States District Court in and for the Southern District of California, Central District, in a case therein pending wherein said M. E. Heiser was and is plaintiff and this debtor was and is one of the parties defendant, said case being No. 7256-C in said Court, and said judgment being purportedly in and for the sum of $278,621.71, a copy of said judgment being hereto attached, marked "Exhibit A" and made a part hereof; and for the purpose of identification and reference, a copy of the complaint filed in said cause is hereto attached, marked "Exhibit B" and made a part hereof; and with respect to said complaint and the judgment based thereon, and with respect to the cause or causes of action attempted to be set out in said complaint, debtor respectfully represents and shows:

(A) At the time of the filing of said suit by said M. E. Heiser, the debtor was not indebted to him in any sum and at the time of the rendition of said judgment the debtor was not indebted to said M. E. Heiser in any amount; the material allegations of the complaint filed in said case are untrue and debtor did not participate in any scheme or conspiracy to defraud said M. E. Heiser and deprive him of gems of

the *calud.* of $165,000.00; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

(B) Protestant says that no personal service of summons was had upon the debtor Leonard J. Woodruff, in said action. On the 31st day of January, 1939, a summons in said action was left at the residence of this protestant, 2446 Inverness Avenue, Los Angeles, California; at that time debtor was not in Los Angeles, California, and did
43 not return to Los Angeles, California, until February 26, or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939, and as soon as the debtor learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court refused to vacate said judgment and permit the debtor to defend the same on its merits, as shown by copy of order attached hereto as "Exhibit C-1". If the debtor had been permitted to defend said action on its merits he could have defeated said action and the action of the court in refusing the debtor permission to defend said action on its merits after timely application denied the debtor relief to which he was entitled in law and in equity.

(C) Protestant says that the complaint filed in said action does not state a cause of action under the laws of the State of California and that said complaint shows upon its face that if the plaintiff ever had any cause of action the same was barred by the statutes of limitations of the State of California before the filing thereof, as provided by Section 338, Subdivision 3, Sections 337 and 343, of the Code of Civil Procedure by the State of California.

(D) Protestant shows to the Court that said judgment is void on its face for the reason that it is rendered in pursuance of complaint based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered.

(E) Protestant, Willie Mae Woodruff, specifically denies that the debtor, Leonard J. Woodruff, wilfully, wrongfully and fraudulently converted any of the raw gems that were the basis of the purported complaint and judgment against the debtor, but that they were purchased by said debtor at a sheriff's sale under execution issued by the clerk of the Superior Court of Los Angeles County, California in cause #276469 in said court pursuant to a judgment rendered in said court against the Golden State Gem Company of California and its successor. That at said sale there were more than two bidders on said gems and that the debtor herein, Leonard J. Woodruff, was the successful bidder on thirty-five sacks of raw gems as more fully shown by the certificate of sale of personal property executed by the sheriff of Los Angeles County, California. A copy of which is hereto attached marked "Exhibit C", and made a part hereof. A copy of the judgment in said cause is also attached hereto marked "Exhibit D", and made a part hereof. Also a copy of the attachment issued in this action marked "Exhibit E" and made a part hereof.

Willie Mae Woodruff, protestant herein, further says that said sale proceeding were in all things regular and that said judgment was and is a binding judgment and that no attempt was ever made to set the same aside and that by virtue of said certificate of sale of personal property issued by said sheriff the debtor became the owner of said property in good faith and for a fair and *valuable* consideration as shown by the proceedings in said cause #276469 in said court.

(F) This protestant further states that the debtor, Leonard J. Woodruff, was induced to loan Calvin Smith $10,000.00 by the said M. E. Heiser on his statement as to the value of the raw gems. That the said M. E. Heiser stated that said gems were of great value and that he would deliver them to the said Calvin Smith to become a part of the assets of a new company to be organized by said Calvin Smith and M. E. Heiser, to be known as the Golden State Gem Company of Nevada, and that relying upon the statements of the said M. E. Heiser the debtor, Leonard J. Woodruff, did loan the said Calvin Smith $10,000.00. That at the

time of this loan the said Calvin Smith was indebted to the said Leonard J. Woodruff in a large sum of money that under Heiser's representation to the said Leonard J. Woodruff, he was convinced that upon the acquisition by the new company of the gems to be delivered by Heiser and also the acquisition of property owned by Heiser in Australia, that the new company would be financially sound and would have sufficient working capital to be successful and that Calvin Smith would, through said company, be in a position to pay the said Leonard J. Woodruff the new loan of $10,000.00 and also all or a portion of the money the said Woodruff had prior to that time loaned the said Calvin Smith. That this *complaintant* is advised and believes that the said debtor, Leonard J. Woodruff, would not have loaned the said Calvin Smith any additional money had it not been that he relied upon the statements of Heiser as to the quantity, quality and value of said raw gems or stones.

Now this *complaintant* states that said statements were false and untrue and were made for the purpose of misleading the debtor, Leonard J. Woodruff, so as to induce him to loan Calvin Smith, the sum of $10,000.00.

This *complaintant* further states that she is informed and believes that after the formation of the Golden State Gem Company of Nevada by the said M. E. Heiser and Calvin Smith, that the said M. E. Heiser became secretary of said company and as such caused to be issued to himself large amounts of stock in said company. And that during the month of September or the early part of October, 1929, he sold to Mrs. Maude Lorrer a large amount of stock in said company that he had received in consideration for the so-called raw gems which were transferred from him to the Golden State Gem Company of Nevada and which he had stored in the United States National Bank of Los Angeles, California. That the said Heiser immediately went to Europe where he remained for some two-and-a-half years during which time he did not take any interest in the management or conduct of the Golden State Gem Company of Nevada, nor did he in any way *make* an effort to protect his said gems which were in storage in said Bank, or

to preserve or to protect the gems in any way. That the said M. E. Heiser during this time left said gems under the management and control of the said Calyin Smith et al. and other officers and directors of the said Golden State Gem Company of Nevada.

Wherefore, this protestant prays the court that upon hearing of this protest that the claim filed herein by the said M. E. Heiser, be denied in its entirety and the court find that M. E. Heiser the purported claimant herein, was and is not entitled to participate as a creditor in any of the assets in the estate of Leonard J. Woodruff, debtor, or Leonard J. Woodruff, Bankrupt.

Respectfully submitted,

WILLIE MAY WOODRUFF, Protestant.

Service of a copy of the within protest is hereby acknowledged this the 9th day of September, 1940.

T. G. GIBSON.

Filed Sept. 10, 1940. Geo. F. Clark, Referee.

Exhibit A, judgment, case No. 7256, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit A to proof of claim of M. E. Heiser, page 10.

Exhibit B.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff et al., Defendants. No. 7256-C.

Complaint for Damages.
(Fraud and Conversion).

Plaintiff above named complains of defendants above named, and each of them and for cause of action alleges that:

I.

Plaintiff is and at all of the times herein mentioned has been a citizen of the Kingdom of Great Britain, a resident of the City of London, County of London, Kingdom of Great Britain and a non-citizen of the United States of America.

II.

That defendants and each of them herein, except Golden State Gem Company of Nevada, at all the times herein mentioned have been and now are, as plaintiff is informed and believes and therefore alleges, and each of them is a citizen of the State of California, United States of America, and residents of the County of Los Angeles, State of California. That no defendant herein is a citizen of the Kingdom of Great Britain nor have they or either of them been citizens thereof during all of the times herein mentioned.

III.

That the Golden State Gem Company of California, Corporation No. One, Corporation No. Two, Corporation No. Three, Corporation No. Four and Corporation No. Five are, and each of them is a corporation duly formed and existing under and by virtue of the laws of the State of California, with their principal place of business at Los Angeles, California; that defendant Golden State Gem Company of Nevada is a corporation organized and existing under and by virtue of the laws of the State of Nevada, with its principal place of business at the City of Los Angeles, California; that John Doe Company is a copartnership consisting of John Doe and Richard Roe; that Black & Co. is a copartnership consisting of Black One, Black Two and Black Three; that Doe One, Doe Two, Doe Three, Doe Four and Doe Five are sued herein by fictitious names for the reason that their true names are unknown to plaintiff at this time, and plaintiff prays leave to insert their true names when the same become *know*.

IV.

That the amount in controversy herein exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00).

V.

That jurisdiction arises and vests in this Court by reason of the fact that plaintiff is a citizen of the Kingdom of Great Britain, and the defendants and each of them are citizens of the United States of America and residents of the State of California.

VI.

That at all times herein referred to plaintiff herein was the sole and exclusive owner of certain raw gems known as Sapphires, Zircons, Opals and Jade, and more particularly described as follows:

Thirty-five Thousand ounces (more or less) mechanical industrial rough sapphires; Twelve Hundred ounces (1200) blue sapphires rough; One Thousand ounces (1,000) Star Sapphires rough; Twelve Hundred ounces (1200) opals black and light, rough; One Thousand ounces (1,000) zircons rough; One piece jade Twenty-eight Pounds.

Said gems are hereinafter referred to as "Raw Gems". At all times herein referred to plaintiff was and now is entitled to the exclusive possession of said raw gems.

VII.

That at all of the times herein mentioned, and particularly at and about the months of July and August, 1928, plaintiff herein was unfamiliar with the laws of the United States of America and the laws of the State of California and Nevada pertaining to the procedure and methods of incorporating companies, and with the business customs and procedure utilized in the State of California *and* State of Nevada in the process of incorporating and financing and selling of stock and securities.

VIII.

That for about twenty years last past plaintiff was and now is engaged in the business of mining and marketing raw gems and particularly emeralds, sapphires and zircons. That in or about the month of June, 1928, plaintiff arrived in the United States from Australia on a business trip to find and establish a regular and ready market for raw

genus, the product of gem mined under his control and management which were then and now are located in Sapphire Valley in New South Wales and Queensland Border in Australia. That in connection with the said mining properties and the carrying on of the said mining operations of the plaintiff herein in Australia, all of which was well known to defendants and each of them, the plaintiff required over a period of eighteen months from said July 28th, approximately One Hundred Fifty Thousand ($150,000.00) Dollars to be used for mining production of sapphires and of locating other gem mines and leases, and for two steam shovels of Bucyrus or Marion make of caterpillar wheels, full circular type, 30 ft. dipper dumping radius. That said operations were also necessary to protect the Monte Christo diamond leases and certain sapphire leases and an emerald lease under the control of plaintiff herein, which leases reverted by their terms back to the Crown upon non-fulfillment of labor conditions by plaintiff herein. That in and by the provisions of the said leases plaintiff was required to cause performance of certain labor and continuously operate the said mines under the said leases, otherwise the same to revert back to the Crown. For the purpose of equipping the said mines and prospecting and locating and operating the same, plaintiff had prior to said July, 1928, expended large sums of money and had utilized most of his available funds for said purpose.

Plaintiff, a citizen of the Kingdom of Great Britain had entered the United States enroute to London, and was present therein pursuant to the terms of a passport, and by the terms of the said passport plaintiff was permitted to remain within the United States of America only for a period of not to exceed six months enroute to London.

That in or about July, 1928, plaintiff arrived in the City of Los Angeles for the purpose of marketing the said raw gems, as described in Paragraph VI hereof, or a part thereof in order to raise capital for his said mining properties and leases aforementioned as aforesaid, and for the purpose of completing his said mining operations and establishing said market for his raw gems.

IX.

That plaintiff, in July, 1928, called on one Golden State Gem Company of California, a defendant herein, doing business at 726 South San Pedro Street, Los Angeles, California, in the gem cutting business, to sell them raw gems. That at said time and place defendant Smith representing himself to be the President and one-third owner of the said company, purchased from this plaintiff for the account of the said Golden State Gem Company of California, certain gems to the amount of over Two Thousand ($2,000.00) Dollars, and there and then informed plaintiff that they should proceed to the office of the defendant Woodruff herein, whom said defendant Smith stated was a two-thirds owner of the said Golden State Gem Company of California, and that said defendant Woodruff would pay this plaintiff therefor. That thereupon plaintiff and defendant Smith went to the office of the said defendant Woodruff and said defendant Woodruff there and then paid for the said gems.

X.

That defendants well knowing each and every matter and fact alleged in the preceding paragraphs, and well knowing that plaintiff was unfamiliar with the laws of the United States of America or the State of California pertaining to the procedure and methods of financing, incorporating and stock selling, and further that the plaintiff was unfamiliar with the business customs and methods of procedure utilized in the United States and in the State of California in connection therewith, the defendants and each of them for the purpose and with the intention of cheating, defrauding and deceiving plaintiff herein, and wrongfully obtaining and securing for their own use and benefit the title to and possession of the said raw gems then owned by plaintiff, as more particularly described in Paragraph VI hereof and the mining properties of plaintiff herein, conspired, schemed and planned together to so cheat, defraud, and deceive plaintiff for the said purpose. In furtherance of the said conspiracy the defendants did the following acts under the following circumstances, to-wit:

(a) That at the said conference between defendants

Woodruff, Smith and plaintiff herein at the office of the defendant Woodruff in the City of Los Angeles, plaintiff informed the said defendants that he had the said stock of raw gems, as mentioned in Paragraph VI hereof, then in San Francisco, and that he had under his control and owned a majority of the voting shares of the Heiser Burinah Sapphire Mines, Ltd., of Australia, and of the said gem mines located in Sapphire Valley in New South Wales and Queensland Border in Australia, then successfully producing sapphires in large quantities and on certain sapphire, emerald and diamond leases in Australia, which leases and mines required the expenditure of approximately One Hundred Fifty Thousand ($150,000.00) Dollars during the succeeding eighteen months, which plaintiff expected to raise through the sale of the said raw gems aforesaid, which were then in his possession in San Francisco, as aforesaid, and that the said leases would revert to the Crown if the aforesaid terms thereof were not fulfilled. That the said Woodruff then and there represented that he was the financial backer of the Golden State Gem Company of California, and owned a two-thirds interest therein, and that the value of the said assets of the said Golden State Gem Company of California were Four Hundred Twenty Thousand ($420,000.00) Dollars, and that the said assets had been recently appraised for that amount by one J. P. Kennedy, whom they stated was a noted appraiser of Los Angeles, and that the said assets were worth the said appraised sum, and that said company in addition thereto had over two thousand customers on its books of the finest and richest houses and people in the United States, and that regular customers of the said company who purchased large amounts of gems from them regularly included Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis of the City Engineering Company of Detroit, a Mr. Howe of Chicago, Feagen & Company, Brock & Company, and the leading jewelers of the United States, all of whom said Woodruff stated were wealthy and that the said defendants Woodruff and Smith could consume through their said agency Golden State Gem Company of California, all of the raw gems that plaintiff could possibly produce, and that he, defendant Woodruff, would be interested in financing the said plaintiff in operating the

said mines and leases of the said plaintiff herein as aforementioned, and requested plaintiff to return the following day to discuss a plan therefor.

(b) That the said defendant Smith obtained the friendship of plaintiff and stated and represented unto plaintiff that he, the said Smith would aid and assist the plaintiff in the marketing of plaintiff's raw gems aforesaid for the purposes aforesaid, and that the said defendant Woodruff was a man of great financial responsibility and business integrity and of great influence within the State of California and in the United States, and that by reason thereof plaintiff could trust the said Woodruff implicitly; that the said Woodruff's "word was his bond", that he, the said Smith, had been a partner of the said Woodruff for many years and that the said Woodruff was one of the largest oil producers in Oklahoma, and had always insisted that he desired to do business only on his word and would become insulted if required to put his agreements or contracts or promises in writing, but that said Woodruff always kept his said oral agreements and promises.

(c) That shortly thereafter said defendant Woodruff requested that plaintiff send for his said raw gems in San Francisco as aforementioned and more particularly described in Paragraph VI hereof, which said raw gems were then in San Francisco, and bring them to Los Angeles so that defendant Smith could examine the same for the said Woodruff and the said Woodruff proposed and represented to plaintiff herein as follows, to-wit:

If the said defendant Smith approved of the said raw gems aforementioned that he, the said Woodruff, would finance the said mines and leases of the said plaintiff herein; that the assets of the said Golden State Gem Company of California, an agency through which he the said Woodruff and the said Smith operated on the basis of two-thirds to the said Woodruff, who financed the same and one-third to the said Smith, who ran the business, were then of the value of Four Hundred Twenty Thousand ($420,000.00) Dollars, that the said company had an indebtedness of about Fifteen Thousand ($15,000.00) Dollars to general creditors, which he, the said Woodruff would forthwith pay and

satisfy, and that he, the said Woodruff held a chattel mortgage on certain assets of said company of Eighteen Thousand ($18,000.00) as a protection against creditors should any emergency arise, which he, the said Woodruff would forthwith cancel and satisfy and that he the said Woodruff held certain gems of value of about Seventy-five Thousand ($75,000.00) Dollars in a box in one of his vaults as security for certain other money which the said company owed him, but which indebtedness he would also cancel and which gems he would forthwith return to the said company so that the said company would be free and clear of all indebtedness whatever, and that he the said Woodruff and the said Smith would cause to be formed by their lawyer, whom they named as Alfred Barstow, a corporation to be known as Golden State Gem Company of Nevada, which they stated was to avoid "stockholders' liability" outside the State of California, and that the said Woodruff and Smith immediately upon the incorporation of the said Nevada corporation would cause to be assigned to the said corporation the said assets of the said Golden State Gem Company of California of the value of $420,000.00 free and clear of all indebtedness whatever, and that thereupon the plaintiff herein should contract with the said company for the account of the Heiser Burmah Sapphires, Ltd., for a period of forty years to sell it all the sapphires and opals and other gems owned, mined, bought or procured at prices as follows:

Best Blue Sapphires—$50.00 per oz.; Second Blues—$25.00 per oz.; Third Blues $10.00 per oz.; Fourth Blues—$5.00 per oz.; Industrial Sapphires—from 25c per oz. to $10.00 per oz.; Rough Opals—$1.00 to $40.00 per oz.; Cut Opals—25c to $2.00 per carat; Opal Beads—$1.00 ea. to $3.00 each, sizes from 3 mm. to 10 mm.; Opal Doublets—50c each to $3.00 each; Cut Sapphires Best Blue—$10.00 per carat; Second Blue—$5.00 per carat; Large Best Fancy Colored Sapphires—$40.00 per oz.; Second Best Fancy Colored Sapphires—$20.00 per oz.; Third Best Fancy Colored Sapphires—$10.00 per oz.; And for very special rare gems, whether diamond, opal, emerald or sapphire, a special price be mutually arranged satisfactory to both parties.

That the said Nevada Corporation should have a capital

of $1,500,000.00 of preferred stock and $3,500,000.00 of common voting stock; that the said preferred stock should be $10.00 per *sahre* with interest at 8Oc annually. That $5,000,000.00 of said stock be divided equally, one-half to plaintiff herein and his nominees and one-half to defendants Smith and Woodruff, one-third of which one-half was to go to Smith and two-thirds to the said Woodruff. That a majority of the said stock so allotted was to be pooled for five years for the purpose of retaining control between the said parties. That in return for the issuance of the said stock to plaintiff, plaintiff herein should cause to be transferred to the said corporation 10,000 cumulative, preference and participating shares of £1 each, of the Heiser Burmah Sapphires, Ltd. treasury stock and 2,000 of the ordinary voting shares of the said stock with the further provision that the said new corporation to be formed would be financed by the said Woodruff, and that $150,000.00 would be made available by said Woodruff over a period of eighteen months to be furnished as required, and $30,000 in cash made available by the said Woodruff for the immediate uses of the corporation, and that the said Woodruff forthwith cause two steam shovels as required to be sent to Australia and that the said corporation would further send over to Australia for development of various diamond properties then held by claim titles of plaintiff, in the neighborhood of $200,000.00 to be used for constructing dams, flumes, laying pipe lines, building machines that would save the diamonds, buying different machinery, meeting payrolls, for the diamond and emerald deposits then held by plaintiff in the form of claims or holdings, and that plaintiff should further transfer to the said company free of encumbrances 30,000 oz. of Industrial Sapphire, part of the said raw gems aforesaid then held in San Francisco by plaintiff.

That the said plaintiff herein would be paid a salary of $25,000.00 per year by the said corporation so to be formed by defendants, together with all of his expenses, and that the said plaintiff herein should immediately proceed to London and Europe for the purpose of obtaining orders and negotiating for business, and that the plaintiff herein should advance the expenses of the said trip until he arrived in London, and that defendant Woodruff would see that funds were forwarded to him in London to reimburse him for his

outlay of expenses, and would from that time on advance expenses of the plaintiff as required.

(d) Said defendants Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems aforesaid and described in Paragraph VI hereof and then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight (38) sacks totalling over forty-two hundred (4200) lbs. of raw gems, and the said large piece of jade weighing twenty-eight (28) lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed, only and not before the assets of the said Golden State Gem Company of California, so represented by said defendants to have a value of $420,000.00, were transferred to the said new company to be formed, free and clear of all indebtedness whatever, and that thereupon and thereafter the said new corporation so to be formed would purchase and pay therefor to the said plaintiff herein, c.o.d., such of the balance of the said raw gems as might be required by them from time to time or such as the said defendant Woodruff might desire to purchase from time to time for said corporation at the price stipulated in the aforementioned agreement and as more particularly set out in subdivision c hereof, and the said defendants did further represent to plaintiff herein, that the said raw gems aforementioned in Paragraph VI hereof, and each and all of them, would be perfectly safe in the said United States National Bank under the said conditions, and would be protected at all times by the said defendants and each of them for the account of the said plaintiff, and that the said 30,000 oz. of Industrial Sapphire would be removed only under the condition aforementioned and not otherwise, and that the remaining portion of the said gems valued in excess of $130,000.00 would only be removed provided such as were removed would be paid forthwith to plaintiff herein as removed, and any of the said gems so removed would be paid for in cash by the said defendants by depositing the said cash to the

account of the said plaintiff herein in the said United States National Bank, which account was opened by plaintiff herein under said agreement with the said defendants in the name of Australia American General Mining Company by plaintiff herein.

(e) That thereupon said defendants did through their said attorney Alfred Barstow prepare the formation of the said corporation to be known as Golden State Gem Company of Nevada, stating to plaintiff that it was for the purpose of carrying out the said representations and promises and did cause the said company to be incorporated. That plaintiff relied upon and thereupon relying upon the said representations, each and all of them, and believing them to be true, and without which representations and belief therein plaintiff would not have so acted, plaintiff proceeded to bring the said raw gems described in Paragraph VI herein, to Los Angeles, and acted as hereinafter set forth. That the said raw gems and all of them did arrive in the City of Los Angeles on or about the 13th day of August, 1928. That on or about the 16th day of August, 1928, and relying upon said representations, and believing each and all of them to be true, plaintiff did cause the said gems to be deposited in the said depository at the said United States National Bank at Eighth and Spring Streets, Los Angeles, California, and did give the said defendant Smith access thereto. That thereupon the said defendant Smith did examine the said gems and did approve the same and did proceed with the said plaintiff herein to the office of the said defendant Woodruff. That at said time the said defendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California, but that the said attorney Barstow was more familiar with incorporation matters, for which reason the said Coleman had not been used to incorporate the said Nevada Company and that the said Barstow had incorporated their said agency the said Golden State Gem Company of California. That said defendant Woodruff did there and then state to this plaintiff that he had cancelled and released the said $18,000.00 indebtedness of the Golden State Gem Company of California and the said Chattel mortgage securing the same and that he had can-

celled and released the indebtedness and lien covering the $75,000.00 worth of gems of the Golden State Gem Company of California which he held in his safe deposit box which he had returned to the said Golden State Gem Company of California, and he, the said defendant Woodruff did then and there in the presence of this plaintiff hand to the said defendant Smith checks totalling approximately $10,000.00 which defendants then and there stated was sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 were then and there free and clear of all indebtedness of whatsoever nature, and the said defendant Woodruff did then and there state that he would give to the new corporation as and when required for financing, a further sum of $30,000.00, and more if required, and that he would forthwith sell shares in Oklahoma and otherwise, and that he would immediately put the company upon a financial basis so that it could conform with its agreement and that plaintiff herein need have no further financial worries, and that none of the gems of the said plaintiff in the said vault at the said United States National Bank except the said 30,000 oz. of Industrial Sapphires would be removed in any form unless payment therefor at the prices agreed upon was first deposited to the account of the said plaintiff in the said bank, and that the said assets of the said Golden State Gem Company of California valued at $420,000.00 would be forthwith transferred to the said new Golden State Gem Company of Nevada free and clear of all indebtedness, and that thereupon the said Woodruff and the said Smith would cause to be transferred to the said Nevada company the said 30,000 oz. of Industrial Sapphires, and that the said 30,000 oz. of Industrial Sapphires would only be transferred to the said Golden State Gem Company of Nevada after the transfer of the assets of the Golden State Gem Company of California free and clear of all indebtedness whatever.

(f) That thereafter the said defendant Woodruff and the said defendant Smith did state and represent to the said plaintiff herein that the formation of the said Golden State Gem Company of Nevada and had been completed and that all of the said assets of the said Golden State Gem Com-

pany of California valued at $420,000.00 had been delivered over to the said Golden State Gem Company of Nevada free and clear of all indebtedness, and thereupon plaintiff herein did cause to be transferred to the said corporation the said shares aforesaid. That thereupon said defendants Woodruff and Wilith did represent to plaintiff that if he would forward the sum of $5,000.00 to his mines in Australia, he the defendant Woodruff upon arrival of plaintiff in London, would cable to said plaintiff the sum of $5,000.00 to reimburse plaintiff for said advance, and that said plaintiff did forthwith forward to the said Heiser Burmah Sapphire Mines at Australia the said sum of $5,000.00, relying upon the said representations and believing them to be true.

XI

That each and every of the aforementioned representations and statements were made by defendants and each of them for the purpose of deceiving and defrauding the plaintiff herein.

XII.

That plaintiff relied upon and relying all and singular upon each and every of the representations of defendants and each of them and believing the said representations and statements and each of them to be true and so relying thereupon, did cause the said raw gems aforementioned and particularly described in Paragraph VI to be placed in the said United States National Bank as aforesaid, and did forward the said $5,000.00 to Australia and did, paying his own expenses, proceed to London, leaving Los Angeles on or about the 5th day of September, 1928, arriving in London in October, 1928.

That plaintiff upon his said European trip proceeded to London, England, Paris, France, Idar and Oberstein, Germany, and St. Claude, Bienne, St. Moritz on the Swiss French border, and did on the said trip obtain a contract from Rabinovitch of St. Claude, France, amounting to twenty-five million francs per year for Blue Sapphires from Australia; plaintiff assembled thirty of the leading gem merchants and cutters of Germany and prepared, negotiations for large contracts of rough sapphires, opals, emeralds

and diamonds to be furnished by the company; plaintiff further obtained an option for the said company from the New Mine Sapphire Syndicate of London over all their mining properties at very advantageous terms with the intention that with the said properties of the plaintiff and the said properties optioned, the said Golden State Gem Company of Nevada, would control between eighty and ninety per cent of the sapphire mines, industrial and otherwise, known to the world; furthermore, in Belgium, plaintiff obtained an option for the said company on an automatic diamond cutting machine, which according to expert advice obtained in London said machine would revolutionize the diamond cutting of the world and would enable the diamond cutting industry to be moved to the United States by use of these machines.

XIII.

Plaintiff believed and relied upon all and singular the representations and statements of the defendants and had he not so believed said representations and promises and relied thereupon he would not have removed his said raw gems aforesaid from San Francisco and would not have left the said gems in Los Angeles as aforesaid, and would not have proceeded to Europe as aforesaid for the account of the said new company, all of which plaintiff did in reliance all and singular upon each and all of the representations, statements and promises of the said defendants, and each of them, and further relying thereupon plaintiff made no other efforts whatsoever to secure money to finance the said enterprises or to sell the said raw gems so deposited in Los Angeles.

XIV.

Said defendants and each of them further acting fraudulently and deceitfully and for the purposes herein alleged, have wholly failed to transfer or assign to the said Golden State Gem Company of Nevada the said assets of the said Golden State Gem Company of California, or any of them.

XV. [1]

That in furtherance of the said conspiracy and as a part thereof and further acting fraudulently and deceitfully and for the purposes herein alleged, said defendant Woodruff

did on or about the 2nd day of April, 1929, through said defendant Coleman as attorney, filed a certain suit in the Superior Court of the State of California, in and for the County of Los Angeles, No. 275092, wherein and whereby the said defendant sought to foreclose the chattel mortgage securing the said note of $18,000.00, which the said defendants had stated and represented to plaintiff had been cancelled, and which said note and mortgage this defendant is informed and believes and therefore alleges was fraudulent, was unauthorized by the said maker, and was made for the purpose of hindering, defrauding and delaying creditors, and by agreement with the said defendant Smith as President of the said Golden State Gem Company of California, the said defendant Smith did accept service of the complaint and summons in the said action and did default the same, and thereby and thereafter judgment was entered at the request of Defendants Woodruff and Coleman against the said Golden State Gem Company of California by defendants and the said property foreclosed upon.

XV. [2]

That on or about the 19th day of April, 1929, the said defendant Woodruff with the said defendant Coleman acting as his agent and attorney and with the knowledge and consent of defendant Smith, further acting fraudulently and deceitfully and for the purpose of cheating, swindling, defrauding and robbing plaintiff herein of the raw gems aforesaid and particularly described in Paragraph VI hereof, and knowing the said raw gems to have a value in excess of $160,000.00 at said time, did cause to be filed in the Superior Court of the County of Los Angeles, State of California, action No. 276469, wherein and whereby said defendant Woodruff filed suit against the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and each of them as defendants, on notes of the Golden State Gem Company of California given to one Jeddis & Company on or about January 20, 1928, for indebtedness of the said Golden State Gem Company of California incurred long prior thereto, one of which said notes was for $500.00 due in twelve months, upon which all had been paid but $183.15, and one of which notes was for $500.00 and was not due or payable until July of 1929, though the

said suit was filed in April of 1929, and said note contained no acceleration clause and interest was payable at its maturity. That said defendant Woodruff alleged that he had purchased the said notes from Jeddis & Company, but failed to allege or disclose therein, and the facts were that the Golden State Gem Company of California had deposited as security for the payment of the said notes jewelry and merchandise valued by said defendants in excess of $2,000.00, which said collateral was then and is now and ever since April 9, 1929, has been in the possession of defendants, as collateral security pledged for the payment of said notes, and the same was not foreclosed, returned or abandoned.

That on or about the 19th day of April, 1929, and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al., No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same has not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff. That at the time of making of said sworn statement, and affidavit, the said defendants and each of them well knew that defendant Woodruff had in his possession, and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of what

soever nature had been had and the said merchandise and collateral was at that time and ever since said time, as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of Ten Thousand ($10,000.00) Dollars and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States National Bank as aforesaid were the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929.

That thereupon in pursuance of the said conspiracy and scheme and further acting fraudulently and deceitfully and with the intent to cheat, swindle, defraud and rob said plaintiff of said raw gems and all thereof, said defendant Smith did default in the said actions and did fail to answer or cause answer to be made in the said actions to the said complaints and summons so served upon him by agreement as aforesaid, and the said defendant Woodruff and his attorney defendant Coleman under his direction did cause a default of the said Golden State Gem Company of California and the Golden State Gem Company of Nevada to be entered in the said last mentioned action on or about the 10th day of May, 1929, and did thereupon on or about the 10th day of May, 1929, cause judgment to be entered as prayed for in said complaint.

That in said complaint in said action, the said defendant Woodruff with the said Coleman as Notary thereon, did

falsely swear to and verify the said complaint with the knowledge that the same was false and untrue and well knowing that he held security of the value of $2,000.00 for the payment of the said obligation of the said notes which have not been foreclosed upon, returned or abandoned, and well knowing that the said obligation was not the obligation of the said Golden State Gem Company of Nevada nor plaintiff herein, and well knowing that they had represented to plaintiff that the said obligations had been paid, and well knowing that the raw gems in the said United States National Bank at Eighth and Spring Streets, Los Angeles, as described in Paragraph VI hereof were the sole property of plaintiff herein, who alone was entitled to possession thereof, did allege in the said complaint that defendant Golden State Gem Company of Nevada had purchased the stock and assets of the Golden State Gem Company of California and had received benefits arising out of the execution and delivery of the aforesaid promissory notes and had agreed to assume the indebtedness due thereon and to pay the same; that demand had been made upon it for payment of the said sum of $183.15 and $536.25, but that while admitting it assumed liability thereon it had failed, neglected and refused to pay the same. That such allegation was known by defendants to be false and untrue and was made as a part of said scheme to obtain from plaintiff the said raw gems as herein alleged.

That the said defendants did thereby cause the said raw gems of the said plaintiff herein on deposit in the said bank, and all thereof, to be attached in the said action as aforesaid, and did on or about the 13th day of May, 1929, after obtaining said default judgment, cause the said raw gems aforesaid of this plaintiff aforesaid and described in Paragraph VI hereof to be sold under such execution, well knowing at all times that the same were the property of this plaintiff, and did on or about the 13th day of May, 1929, at the said execution sale so caused by the said defendants, cause the same to be purchased for their account for the sum of One Thousand Dollars ($1,000.00) applied upon the said judgment, and did thereupon deceive, cheat, swindle, defraud and rob the plaintiff of the said raw gems aforementioned and described in Paragraph VI, and all of them and defendants did convert the same and all of them to their own use

and benefit, and have ever since said time held and do now hold the same from plaintiff, and refuse to deliver the same to plaintiff though plaintiff prior to the commencement of this action has demanded the same. That defendants and each of them obtained the said raw gems and all of them wrongfully and without any right whatsoever thereto, and in furtherance of their plans to cheat, defraud and rob plaintiff herein, and did wrongfully and maliciously take physical possession of the same on said date and ever since said date have exercised absolute physical control and dominion over the same, and in defiance of plaintiff's rights thereto, and have converted the same and all thereof to their own use and benefit, to the damage of plaintiff as hereinafter alleged. That on the said 13th day of May, 1929, the said raw gems aforementioned, and more particularly described in Paragraph VI herein, were reasonably worth the sum of $164,000.00 and plaintiff has been damaged all and singular by the acts and conduct of the defendants and each of them in the sum of $164,000.00.

That all and singular the conduct and acts of the said defendants and each of them were malicious, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

XVI.

That the acts and each of them of the defendant Coleman herein, as the plaintiff is informed and believes and therefore alleges, were at the instance, request and direction of defendant Woodruff herein, and for his account and benefit, and with his full knowledge and consent, and as his agent and attorney.

XVII.

That plaintiff herein discovered the fraud herein alleged in and about the month of April 1932, and at said time first discovered how and in what manner said gems had been removed and obtained by said defendant Woodruff, and plaintiff had no knowlege thereof prior thereto. This plaintiff is informed and believes and upon that ground alleges that defendants Woodruff and Smith, and each thereof, since May 13, 1929, and prior to April 1, 1932, for a period of three months and more, and since April 1932 and since

the said cause of action herein was accrued, for a period of six months and more, have been outside of the State of California and outside of the jurisdiction of this Court.

XVIII.

Plaintiff is informed and believes and upon that ground alleges that the defendants and each of them at the time of making of the said promises herein alleged to have been made, had no intention whatsoever of performing the promises or any of them, and knew that they would not perform the same. That the said promises and each and every of the above representations, statements and acts were made and done by defendants and each of them for the purpose of deceiving, defrauding and cheating, and did deceive, defraud and cheat plaintiff.

XIX.

Plaintiff relied all and singular upon each of the representations, statements and promises of the said defendants and each of them and believed said representations, statements and promises to be true, and so relying thereupon did on or about the 13th day of August, 1928, deliver unto the United States National Bank at Eighth and Spring Streets, Los Angeles, for the purposes herein alleged, the said gems aforesaid, and more particularly described in Paragraph VI hereof, and further relying thereupon plaintiff did perform each and everything upon his part to be performed, and did do each and every thing asked or requested of him by defendants or either or any of them, and signed each and every paper and instrument requested by defendants or either of them or their agents for the purpose of carrying into effect the said agreement of the parties as herein set forth.

XX.

Plaintiff believed all and singular the representations and statements of the defendants and each of them, and particularly the representations, statements and promises of the defendants Woodruff and Smith that the said raw gems of the plaintiff herein aforesaid and more particularly described in Paragraph VI hereof would not be removed or molested by them or either of them or for the account of either of them except under the conditions aforesaid stated, repre-

sented, promised and agreed by them, and had he not so believed said representations and promises and relied thereupon he would not have delivered the said gems as aforesaid nor left them in Los Angeles nor executed or accepted any of the writings or agreements herein referred to.

For a second, separate and further cause of action by plaintiff against the said defendants and each of them, plaintiff alleges that:

I.

Plaintiff reincorporates and realleges each and every allegation, matter and fact contained in Paragraphs I to XX, inclusive, of his first cause of action.

II.

As a direct and proximate result and consequence of the fraudulent and deceitful conduct of said defendants as hereinbefore alleged, and in *consumation* of their said fraudulent conspiracy and common design, the said raw gems owned by plaintiff of which plaintiff at said time was entitled to possession, were on or about May 13, 1929, seized by defendants and so were lost to plaintiff herein to his damage in the sum of $164,000.00, the said value thereof at said time, together with interest thereon, all in defiance of the rights of plaintiff herein.

III.

And further, as a direct and proximate consequence of the fraudulent and deceitful acts and conduct of the defendants, as hereinbefore alleged, plaintiff lost valuable rights and profits on the said leases aforesaid in the sum of $100,000.00.

IV.

That all and singular the conduct and acts of said defendants, and each of them, were and are malicious and fraudulent, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

For a third, separate and further cause of action by plaintiff against the said defendants and each of them, plaintiff alleges that:

I.

Reincorporates and realleges each and every allegation, matter and fact contained in I to IV, inclusive, of his second cause of action.

II.

That the said representations and statements made by defendants and each of them, were at the time of making said statements and representations known to them and each of them to have been false and untrue and were made for the purposes of deceiving, defrauding and cheating this plaintiff, and the same were false and untrue in this, to-wit:

That the value of the said assets of the said Golden State Gem Company of California was not $420,000.00, and the said assets were not worth the said appraised sum and were not worth in excess of $50,000.00; that the said Golden State Gem Company of California did not have over two thousand customers on its books, of the finest or richest houses or people in the United States, and did not have regular customers who purchased large amounts of gems from them regularly, or otherwise, or which included Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis, Howe, Faegan & Company, Brock & Company, or the leading jewelers of the United States; that the said defendants Woodruff and Smith or either of them could not consume through their agency Golden State Gem Company of California all or any large portion of the raw gems that plaintiff could produce; that the said Woodruff had no intention of financing the said plaintiff in operating the said mines and leases of plaintiff as aforementioned; that said defendant Woodruff was not a man of business integrity or of great influence within the State of California or in the United States, or who could be trusted implicitly or otherwise; that the said defendant Woodruff's word was not his bond; that the said Woodruff did not keep his oral agreements or promises; that the said defendants did not want plaintiff to bring his raw gems to Los Angeles for the purpose of examination thereof by defendants, but solely for the purpose of obtaining them for the use and benefit of said defendants without payment therefor to plaintiff; the said Woodruff had no intention of

financing said mines or leases of plaintiff herein at the time that he represented, stated and promised that he would, or at any other time; that the said Golden State Gem Company of California had an indebtedness in excess of the sum of $15,000.00 to general creditors; that at the time of making of the said promise said defendant Woodruff and Smith had no intention of forthwith or at any other time cancelling or satisfying the said chattel mortgage held by the said defendant Woodruff against certain assets of the said Golden State Gem Company of California in the amount of $18,000.00; that said defendant Woodruff had no intention at the time of making said promise that he would forthwith, or at any other time, cancel or satisfy the said indebtedness claimed to be owed to him by the Golden State Gem Company of California for which he held $75,000.00 in gems as a pledge therefor, and had no intention of returning the same; that the said defendants Woodruff and Smith had no intention of immediately or at any other time, causing to be assigned to the said Nevada company the said assets of the said Golden State Gem Company of California to the value of $420,000.00, or at any other value free or clear of all indebtedness or otherwise; that the said defendant Woodruff had no intention at the time of making said promise and representation that $150,000.00 would be made available by said Woodruff over a period of eighteen months, or any other period or that the same would be furnished as required, or of making $30,000.00 in cash available for immediate uses of the corporation, or forthwith or at any other time cause two steam shovels or any other item to be sent to Australia, or any other place for any purpose whatever; that the said defendants had no intention at the time of making said promise, that they would pay plaintiff $25,000.00 per year salary, or any other amount, for his expenses, or any part thereof, and had no intention of advancing the same; said defendants had no intention of purchasing the raw gems of plaintiff herein at the time of making said representations, or at any other time, but their intention was solely to obtain said raw gems of plaintiff without payment therefor to plaintiff; defendants had no intention of paying c.o.d. or otherwise for any part of the said property of plaintiff, and defendants and each of them knew that the said raw

gems of plaintiff would not be safe in the said depository but would be removed by them without payment therefor to plaintiff; said defendants and each of them had no intention whatever of depositing any cash whatever to the account of plaintiff herein or otherwise; that the said defendant Woodruff did not and had no intention of cancelling or releasing the said $18,000.00 alleged indebtedness of the said Golden State Gem Company of California or the said chattel mortgage securing the same, or the said indebtedness or lien covering the $75,000.00 worth of gems of the said company which he alleged he held in his safe deposit box, that the said defendant Woodruff had not returned the same or cancelled the same; that the said sum of $10,000.00 was not sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and was not used, and said defendants had no intention of using the same to pay the same; that the said assets of the said Golden State Gem Company of California valued at $420,000.00, or any other sum, were not free or clear of all or any indebtedness whatsoever; that the said formation of the said Golden State Gem Company of Nevada was not then and never had been completed and the said assets of the said Golden State Gem Company of California valued at $420,000.00 or any other sum had not been and never were delivered over to the said Golden State Gem Company of Nevada free and clear of indebtedness, or otherwise, or at all; that said defendants had no intention of forwarding the sum of $5,000.00, or any sum whatever to plaintiff to reimburse him, or otherwise; all as this plaintiff is informed and believes, and therefore alleges.

III.

That plaintiff has been damaged in the premises in the sum of $264,000.00.

IV.

That all and singular the conduct and acts of the said defendants and each of them were and are malicious, and by reason thereof plaintiff alleges that he is entitled to exemplary and punitive damages in the sum of $150,000.00.

Wherefore, plaintiff prays judgment against said defendants as follows:

Upon his first cause of action in the sum of $164,000.00 with interest at the rate of 7% per annum from the 13th day of May 1929 to date of entry of judgment, and together with $150,000.00 exemplary damages, together with interest thereon at the rate of 7% per annum from the 13th day of May 1929, and upon his second cause of action for damages in the sum of $264,000.00, and upon his third cause of action for the sum of $414,000.00, for his costs herein incurred, and all other, further and proper relief as to the Court may seem meet.

LEONARD J. MEYBERG,
By LEONARD J. MEYBERG,
Attorney for Plaintiff.

Exhibit C.

Certificate of Sale of Personal Property.

In the Superior Court of the County of Los Angeles, State of California.

Leonard Woodruff, Plaintiff, vs. *Golfen* State Gem Co. of Nevada, a corporation, and Golden State Gem Co., a corporation, Defendants.

69 I, Wm. I. Traeger, Sheriff of the County of Los Angeles, State of California, do hereby certify that, under and by virtue of Writ of Execution issued out of the Superior Court of said County of Los Angeles, in a certain action lately pending in said Court at the suit of Leonard Woodruff plaintiff, against Golden State Gem Co. of Nevada, a corporation and Golden State Gem Co., a corporation, Defendants, attested the 13th day of May, 1929, by which I was commanded to make the sum of - - Sixteen Hundred seventy-seven and 22/100 ($1672.22) - - Dollars, with interest and costs to satisfy the judgment in said action out of the personal property of said Defendants if sufficient personal property could be found, all as more fully appears by the said writ, reference thereunto being hereby made; I have levied on, and on the 18th day of May, 1929, at 9:30 o'clock, A. M., at Los Angeles, Warehouse, 316 Commercial Street, in the city of and in said County of Los Angeles, duly sold at public auction, according to law, and

after due and legal notice, to Leonard Woodruff who mad
the highest bid therefor at said sale for the sum of On
Thousand and 00/100 ($1000.00) - - Dollars in lawful mone
of the United States; which was the whole price pai
therefor, all the right, title and interest of the said judg
ment debtor in and to the folowing described personal
property, to-wit:

35 Sacks said to contain "Uncut Sapphires"

70 Dated 18th day of May, 1929.

WM. I. TRAEGER, Sheriff.
By GEO. H. BARTER,
Deputy Sheriff.

Endorsed on Back: No. 276469. Superior Court, Count
of Los Angeles. Wm. I. Treager, Sheriff of the County
Los Angeles, to Leonard Woodruff. Certificate of Sale
Personal Property. Dated May 18, 1929.

Exhibit C-1.

Order.

In the District Court of the United States, Southern Di
trict of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff et al., De
fendants. No. 7256-C.

66 Motion of defendant Leonard Woodruff for orde
of this court, to vacate and set aside the default an
the default judgment entered herein against the said defen
ant, and to permit the said defendant to file his answer her
in, having come on regularly for hearing on the 10th day
April, 1939, at 10 o'clock A. M. of said day, the Honorabl
Judge Geo. Cosgrave presiding and Ames Peterson, Es
appearing as counsel for the defendant Leonard Woodru
and Leonard J. Meyberg, Esq. appearing as counsel f
the plaintiff herein, and the court being fully advised i
the premises, and the said Ames Peterson, Esq., counsel f
said defendant Leonard Woodruff, having applied to th
court for permission to file additional points and authoritie
and the court having allowed the said defendant Leonar

Woodruff time within which to file the same and having allowed time to the plaintiff within which to answer the same, and the said parties having filed their additional points and authorities and additional affidavits, the said parties having appeared before the court on the 25th day of May, 1939, at the hour of 2 o'clock P. M., the defendant Leonard Woodruff by his counsel Ames Peterson, Esq., and the plaintiff by his counsel Leonard J. Meyberg, Esq., and the said parties having, through their said respective counsels, stipulated that all affidavits filed be a part of the record, and the court being fully advised in the premises, and the matter having been submitted, and no adverse interest appearing,

It Is Hereby Ordered that the motion of defendant Leonard Woodruff for the order of this court to vacate and set aside the default and the default judgment heretofore entered herein against the said defendant Leonard Woodruff, and for order of this Court permitting said defendant Leonard Woodruff to file his answer herein, be, and the same is, hereby denied.

67 The parties appearing before the court on May 25, 1939, through their said respective counsel, to-wit, Plaintiff Leonard J. Meyberg, Esq., and defendant Leonard Woodruff by Ames Petersen, Esq., having further stipulated that on Monday, June 12, 1939, at 2 o'clock P. M., or as soon thereafter as counsel may be heard, the said Judge of the Court herein may hear evidence on behalf of the plaintiff and evidence on behalf of said defendant Leonard Woodruff as to the value of the property of plaintiff herein, for which damages were allowed in the judgment herein against the said defendant, which said hearing shall be without a jury, a jury being expressly waived by the parties, and the *issued* at such hearing to be limited to ascertaining by the Judge of the said Court, from such evidence to be presented by the said parties under the rules of evidence of the said Court, the sum of amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment herein against the said defendant, as in said complaint alleged, and that should the said Judge of the said Court, after such hearing, find from such evidence that the value

of the said property with interest thereon at 7% per annum from May 13, 1929, to date of entry of judgment, is less than the sum or amount of the judgment entered herein against said defendant, Leonard Woodruff, then and in such event the said judgment entered herein may be modified and reduced in amount by said Judge of said Court to such sum as the said Judge of this Court may find from such evidence, as aforesaid, together with costs as in said judgment stated, and any additional costs which the Court may find proper, and with interest thereon, and it was further stipulated between the said respective counsel representing plaintiff and said defendant Woodruff that plaintiff waives as against said defendant Woodruff his claim to exemplary and punitive damages of $150,000.00 set up in his first cause of action in his complaint, page 22, paragraph XV, lines 6 to 9, and his claim for damages of $100,000.00 for loss of rights and profits in his complaint on page 24, paragraph III, lines 21 to 24, and his claim for exemplary and punitive damages of $150,000.00 in his second cause of action in said complaint, page 24, paragraph IV, lines 26 to 30, and the claim for punitive damages in the sum of $150,000 set up in the third cause of action, page 28, paragraph IV, lines 11 to 14, and that such exemplary or punitive damages shall not be considered by the Judge in ascertaining the value of the said property, and notice of such hearing having been expressly waived,

It is the intent and purpose of this order that such competent evidence as either party desires to present be received by the said court at said hearing and considered by it in determining the actual value of the property which the plaintiff alleges was converted by the defendants.

68

Now, Therefore, It Is So Ordered.

Dated: June ....., 1939.

.....
District Judge.

Nothing herein shall be construed as a waiver by either party of his right to except for purposes of appeal. Defendant Woodruff does not intend hereby to stipulate to the truth or falsity of any allegation of the complaint.

The aforementioned order and stipulations are hereby approved as to form.

.....
Attorney for Plaintiff.
AMES, PETERSON and EDWARD FITZPATRICK,
By .....
Attorneys for Leonard Woodruff.

Exhibit D.

Judgment by Default by Court.

In the Superior Court of the State of California, in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., a California Corporation, and Golden State Gem Co. of Nevada, a Nevada Corporation, Defendants. No. 276-469.

71 In this action the defendant, Golden State Gem Co. of Nevada, a corporation and the defendant, Golden State Gem. Co. a California corporation, having been served with process, and having failed to appear and answer the Plaintiff's Complaint on file herein, and the time for answering having expired, and no Answer or Demurrer having been filed, the default of said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation, in the premises, have been duly entered according to law:

Now, at this day, on the application of J. A. Coleman: attorney for said plaintiff, it is hereby ordered that judgment be entered against the said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation, in accordance with the prayer of said Plaintiff's Complaint on file herein.

Wherefore, by reason of the law and the premises aforesaid, it is Ordered, Adjudged and Decreed that Leonard Woodruff, the plaintiff, do have and recover of and from the said defendants, Golden State Gem Co. of Nevada, a Corporation and Golden State Gem Co. a Corporation the sum of $1,351.34, with interest thereon at the rate of 7

per annum from April 9th, 1929 to date, amounting to the sum of $7.88, together with Plaintiff's costs and disbursements incurred in said action, amounting to the sum of $317.00, making a total of $1,676.22.

Dated: May 10, 1929.

MARSHALL F. McCOMB, Judge.

Partly satisfied by Sheriff 5/18/29.

Amt. Collected $1451.40.

Attest: L. E. LAMPTON, County Clerk.

6/5/29 by R. E. PARKIN, Deputy.

Filed May 10, 1929. Entered May 11, 1929. Book 730, Page 51.

Exhibit E

Writ of Attachment.

In the Superior Court of the State of California in and for the County of Los Angeles.

Leonard Woodruff, Plaintiff, vs. Golden State Gem Co., et al., Defendents.

The People of the State of California
To The Sheriff, of the County of Los Angeles, Greeting:

72 Whereas, the above entitled action was commenced by Plaintiff in the Superior Court of the County of Los Angeles to recover from the Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, the sum of $1069.40 Dollars, lawful money of the United States, besides interest at the rate of 7 per cent per annum from 9th day of April, 1929, and costs of suit; and an affidavit for, and undertaking on, attachment, have been filed as required by law.

Now, you are commanded to attach and safely keep all property of such Defendants, Golden State Gem Co., a California Corporation, and Golden State Gem Co., of Nevada, a Nevada Corporation, within your County, not exempt from execution, or so much thereof as may be sufficient to satisfy

the Plaintiff's demand against such Defendants unless such Defendants give you security, by the undertaking of at least two sufficient sureties in an amount sufficient to satisfy such demand against such Defendants, besides costs, or in an amount equal to the value of the property of such Defendants, which has been or is about to be attached; in which case you will take such undertaking and hereof make service and return.

Witness the Honorable and Presiding Judge of the Superior Court, attested by my hand and the seal of said Court this 19th day of April, 1929.

Seal of Superior Court. (Seal)

L. E. LAMPTON, County Clerk.
By W. D. BUCKLEY, Deputy.

To the Sheriff of Los Angeles County:

73 Under and by virtue of a within Writ of Attachment, you will please attach all of the following described personal property, located at 726-728½ South San Pedro Street, Los Angeles, California, to-wit:

1 Pipe Organ Coral
4 Oil Paintings
2 Time Clocks
4 Silver Candlesticks
5 Silver Vases
1 Silver Salt Shaker
1 pr. spectacles
2 Shell ink wells
1 American Adding Machine
2 Oliver typewriters (old)
1 Large Crystal ball with stand
1 Small Crystal ball and stand
1 Large Crystal ball without stand
1 Agate Perfume Bottle with cork
1 Case of watch crystals
22 wrist watches
8 rings in cases
26 Kunsite stones (cut)
2 bbls. carborundum
1 large drop press
1 large microscope
2 small magnifying glasses
4 gas heaters
4 gas plates and gas jets
2 rolls carborundum cloth
2 looking glasses
1 Goodell press drill (hand)
1 step ladder
1 typewriter desk
1 tape wrapping machine
100 pr. Imitation beads

Also 4,000 pounds more or less of rough sapphire stones, and 1000 oz. of Zircon stones located in the United States National Bank at 758 South Spring Street, Los Angeles, California.

You will please put a Custodian in charge at 726 South San Pedro Street, Los Angeles, California, at plaintiff's cost and remove property from the United States National Bank for safe keeping.

No chattel mtge. on above.

Filed Apr. 26, 1929.

J. A. COLEMAN,
Attorney for Plaintiff.

Sheriff's Return on Execution.

No. 276-469

State of California, County of Los Angeles, ss.

74 I, Wm. I. Traeger, Sheriff of the County of Los Angeles, do hereby certify that under and by virtue of the within and hereunto annexed writ of Execution by me received on the 13 day of May A. D. 1929, I did on the 13 day of *May* A. D. 1929, levy upon the personal property hereinafter described and noticed the same for sale as the law directs (by posting written Notice of the time and place of sale) particularly describing the property for six days successively in three public places in the Township or City where said property was sold, and on Sat. the 18th of May, 1929, at 9 & 10 o'clock A M of said day, I did attend and offered for sale at Public Auction, for United States Gold Coin, the property described

35 Sacks said to contain "Uncut Sapphires"

Sold to—Leonard Woodruff, for the sum of $1000.00

At—Los Angeles Warehouse, 316 Commercial Street, in the city of and county of Los Angeles.

Paintings, heaters, furniture, fixtures, equipment and all other personal property of similar nature belonging to said defendant,

Sold to—Leonard Woodruff, for the sum of $350.00

At—726 South San Pedro, Street, city of and county of Los Angeles

1—Sack said to contain "Uncut Sapphires"

Sold to—Irving Creek, for the sum of $150.00

At—Los Angeles Warehouse, 316 Commercial Street, in the city of and county of Los Angeles

and sold the whole of the same in three separate parcels to Irving Creek and Leonard Woodruff purchaser for the sum of Fifteen Hundred Dollars in United States Gold Coin; said purchaser being the highest bidder and said sum being the highest bid; in the aggregate for the same. And I further certify that I deducted from the said sum of $1500.00 my fees, commissions and expenses, amounting to the sum of $48.60 leaving a net balance of Fourteen hundred and fifty one and 40/100 $1451.40, which I have paid to Plaintiff's Attorney, whose receipt therefor is hereto attached,
75 and I hereby return the annexed writ partially satisfied.

Dated Sat this 18 day of May A. D, 1929.

WM. I. TRAEGER,
Sheriff of the County of Los Angeles.
By GEO. L. BARTON
Deputy Sheriff.

Filed June 4, 1929. Entered June 5, 1929. Book 730, Page 51.

[Certified.]

Protest and Objections of Debtor, Leonard J. Woodruff, to the Allowance and Approval in Whole or in Part of Claim of M. E. Heiser.

76 Comes now the debtor, Leonard J. Woodruff, and protests and objects to the allowance in whole or in part of the claim of M. E. Heiser filed herein, for the following reasons, to-wit:

Said claim is based, predicated and founded upon a purported judgment rendered by the United States District Court in and for the Southern District of California, Central Division, in a case therein pending wherein said M. E. Heiser was and is plaintiff and this debtor was and is one of the parties defendant, said case being No. 7256-C in said court, and said judgment being purportedly in and for the sum of $278,621.71, a copy of said judgment being hereto attached, marked Exhibit "A" and made a part hereof; and for the purpose of identification and reference, a copy of the complaint filed and in said *cuase* is hereto attached, marked Exhibit "B", and made a part hereof; and with respect to said complaint and the judgment based thereon, and with respect to the cause or causes of action attempted to be set out in said complaint, debtor respectfully represents and shows:

(A) At the time of the filing of said suit by said M. E. Heiser, the debtor was not indebted to him in any sum and at the time of the rendition of said judgment the debtor was not indebted to said M. E. Heiser in any amount; the material allegations of the complaint filed in said case are untrue and debtor did not participate in any scheme or conspiracy to defraud said M. E. Heiser and deprive him of gems of the value of $164,000.00; said judgment is without merit, is unjust and said M. E. Heiser is not entitled thereto.

77 (B) Debtor says that no personal service of summons was had upon him in said action. On the 31st day of January, 1939, a summons in said action was left at the summer residence of the bankrupt's wife at 2446 Inverness Avenue, Los Angeles, California; at that time bankrupt was not in Los Angeles, California, and did not return to Los Angeles, California, until February 26 or 27, 1939, and that he did not learn of said purported service upon him until February 27, 1939, and after his default was entered in said action on February 23, 1939. Judgment by default was entered March 20, 1939 and as soon as the debtor learned of the entry of said judgment by default and on March 29, 1939, he filed his motion to vacate said judgment and asked for leave to appear and defend said action on its merits. Such motion was timely and meritorious, but the trial court re-

fused to vacate said judgment and permit the debtor to defend same on its merits, as shown by copy of order attached hereto as Exhibit "C". If the debtor had been permitted to defend said action on its merits, he could have defeated said action and the action of the court in refusing the debtor permission to defend said action on its merits after timely application denied the debtor relief to which he was entitled in law and equity.

(C) Debtor says that the complaint filed in said action does not state a cause of action under the laws of the State of California and that said complaint shows upon its face that if the plaintiff ever had any cause of action same was barred by the statutes of limitations of the State of California before the filing thereof.

(D) Debtor shows to the Court that said judgment is void on its face for the reason that it is rendered in pursuance of complaint based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered.

(E) Debtor specifically denies that he was ever at any time a stockholder in the Golden States Gem Company of California and denies that he has ever at any time
78 had any interest therein; he specifically denies that he was ever at any time to his knowledge a stockholder in the Golden States Gem Company of Nevada and was ever at any time interested therein. Debtor alleges the facts to be that sometime during the month of July 1929, the claimant Heiser and Calvin Smith came to the debtor for the purpose of inducing the debtor to loan to Calvin Smith some money to be used by Smith and Heiser in the formation of a corporation for the purpose of marketing raw gems. That at that time the said Calvin Smith was indebted to this debtor in the sum of Approximately $50,000.00, which debtor had loaned to Calvin Smith and for only a small part of which he held security. That it was represented to the debtor that if he would advance the further sum of $10,000.000 to the said Calvin Smith that it would enable the said Calvin Smith to engage in a business which would be very lucrative and which would permit the said Calvin Smith to earn enough money to pay back the debtor the amount of money which he

had theretofore loaned him, together with the additional sum of $10,000.00 which the said Calvin Smith at that time sought to borrow from the debtor. That the debtor in pursuance of said representations did loan and advance to the said Calvin Smith the further sum of approximately $10,000.00, and the said Smith and the said Heiser agreed at that time that they would see that there was paid out of said $10,000.00 the two notes in the sum of $500.00 each to the Alphrouse Jettis & Company, which the Golden States Gem Company of California had theretofore given to said company and which the debtor had endorsed as an accommodation endorser. The debtor alleges the facts to be that said Heiser received and appropriated to his own use and benefit part of the $10,000.00 which this debtor loaned to the said Calvin Smith on the 17th day of August, 1928, and that the said Heiser and the said Calvin Smith jointly failed to pay the said Jettis notes. That thereafter the debtor was compelled to pay both of said notes and brought suit in the Su-
79 perior Court of Los Angeles County, being Cause No. 276,469 therein, against the said Golden States Gem Company of California, and its successor corporation theretofore organized by said Calvin Smith and M. E. Heiser, to-wit: The Golden States Gem Company of Nevada, which company had assumed and agreed to pay the obligations of the said Golden States Gem Company of California, to recoup his loss in the payment of said notes, which he had endorsed as accommodation endorser for the Golden States Gem Company of California. Debtor further says that at said time the only property owned by the Golden States Gem Company of California or the same company of Nevada, as far as he knew or could ascertain, were certain store furnishings, and stock of goods in the store, and certain purported raw gems which were then in storage in the United States National Bank of Los Angeles, California, and in order to recoup his loss he caused an attachment to issue against the property of said corporation, which he could locate and find, including said supposed and purported raw gems. That he obtained a valid Judgment in said suit and caused an execution to issue therein in due course and said property to be advertised for sale at public auction, and at said public auction the debtor became the purchaser of a

part of said property, he being the highest and best bidder therefor at said sale at which there were several bidders. Debtor attaches hereto as Exhibits "D" and "E" a copy of the judgment rendered in said action and a copy of the certificate of sale of personal property by the Sheriff of Los Angeles County, California. Debtor says that such sale proceedings were in all things regular, said judgment was and is a binding judgment, that no attempt has ever been made to have the same vacated or set aside, and that by said certificate of sale of personal property issued by the Sheriff of Los Angeles County, the debtor became the owner of said property in good faith and for a fair and valuable consideration.

(F) Debtor says that the said Heiser represented to him at the time that he was urging and endeavoring to induce the debtor to loan said Calvin Smith said $10,000.00 80 that said so-called gems were commercial stones of considerable value and that the acquisition of said stones by the new corporation to be formed by the said Calvin Smith and Heiser and to be known as the Golden States Gem Company of Nevada, and the acquisition by said corporation of leases owned by the said Heiser in Australia would make said corporation sound financially and would provide it with sufficient working capital to make it a success, thereby placing the said Calvin Smith in a position where his interest in said corporation would be of sufficient value and would pay sufficient dividends to permit him to reimburse the debtor for the money which he had theretofore loaned him and the additional $10,000.00 which the said Calvin Smith and Heiser were seeking at that time. That the debtor relied upon said representations and statements of the said Heiser with reference to the character, quantity and value of said stones. Debtor says that he would not have loaned said Smith said Additional $10,000.00 but for the statements of said Heiser aforesaid. Now debtor respectfully shows to the Court that said statements were false and untrue and were known to be false by the said Heiser at the time they were made to the debtor and were made for the purpose of misleading and of inducing him to loan said Calvin Smith said sum of $10,000.00 in order that the said Heiser could get a part of said money and appropriate the

same to his own use and benefit. Debtor says that instead of said stones being as represented and instead of them being commercial stones of considerable value they were and are what is known as "culls" and had at that time and now have very little value for any purpose and such facts were known to the said M. E. Heiser at the time.

(G) Debtor says that after the formation of the Golden States Gem Company of Nevada by the said M. E. Heiser and the said Calvin Smith that the said M. E. Heiser
81 was elected as secretary of said corporation and acted as such secretary and in pursuance of his duties as such secretary he caused to be issued to himself large amounts of stock in said corporation and thereafter and sometime in the month of September or the early part of October, 1928, he sold to Mrs. Maude Loller of San Francisco a large amount of stock which he owned in the Golden States Gem Company of Nevada and which he had received as consideration for the so-called raw gems which he transferred to said Golden States Gem Company of Nevada and which were stored in said United States National Bank of Los Angeles. The said Heiser immediately went to Europe where he remained for more than two years, during which time he did not take any interest in the management or the conduct of said Golden States Gem Company of Nevada nor did he endeavor to protect said raw gems which were in storage against storage charges or to realize upon their value, if any, nor to preserve or protect said property in any wise. That said M. E. Heiser during all of said time left said property and said corporation to the management and control of the said Calvin Smith and the other officers and directors thereof.

(H) Debtor respectfully represents and shows to this Honorable Court that an action was first filed against him by the said M. E. Heiser in the United States District Court for the Southern District of California in the year 1932 or 1933, and that thereafter and sometime during the month of June 1935, said action was dismissed by the court for want of prosecution. That said action was based upon the same purported cause of action set out in the complaint in the cause in which judgment was rendered and upon which the

claim herein is based. That the said M. E. Heiser
82 failed to prosecute said action.

(I) Debtor further shows to the Court that the Golden States Gem Company of California and the Golden States Gem Company of Nevada were thrown into bankruptcy sometime during the year of 1929 or 1930 and that the said M. E. Heiser filed a claim in said bankruptcy proceeding for the sum of approximately $35,000.00, being the value set upon and alleged by the said M. E. Heiser as the value of the so-called raw gems set out and described in the sixth numbered paragraph of his complaint in said Cause No. 7256-C in the United States District Court in and for the District of California, and in and by said claim in bankruptcy said M. E. Heiser alleged, among other things, that said gems did not have a value in excess of $35,000.00 and that he had parted with the title thereto and that the title to said gems was vested in the Golden States Gem Company of California and in the Golden States Gem Company of Nevada at the time said companies went into bankruptcy, and debtor alleges the facts to be that said M. E. Heiser did transfer to said Golden States Gem Company of California and of Nevada the possession and title to said raw gems prior to his departure for Europe in 1928 and that he did not there thereafter claim any right, title or interest therein or thereto for a period of more than two years and until he returned to the United States. That during the time said M. E. Heiser was gone large amounts in storage charges accrued against said raw gems and were paid by the Golden States Gem Company of Nevada and after the debtor filed his suit upon said notes to the Jettis Company, which he was compelled to pay, the debtor paid the storage charges upon said raw gems until they were removed from said bank.

(J) Debtor says that said so called raw gems are now in possession of the trustee herein and are in the identical condition they were in at the time that this debtor purchased them at said sheriff's sale and that they can be examined and appraised under direction of the Court by experts acquainted with the value of such merchandise.

(K) Debtor says that judgment in favor of said

83 M. E. Heiser is apparently based upon a cause of action founded upon fraud and that said judgment includes therein the sum of approximately $1113,000.00 in interest which accrued prior to the rendition of the judgment and debtor shows to the court that if said judgment was based upon fraud and if this debtor was guilty of fraud in the alleged converting of said property, that the said M. E. Heiser would not be entitled to interest until he had established in court the amount of damages to which he was entitled by reason of the fraud of the debtor and until his claim had become liquidated. That therefore said judgment in so far as it purports to allow interest up to the time of its rendition, is unjust, unfair, without merit, and void.

(L) Debtor specifically denies that he ever made any representations to the said M. E. Heiser as to the value of the assets of the Golden States Gem Company of California or as to any indebtedness of said company to the debtor or as to any property held by the debtor as security for the indebtedness of the said Golden States Gem Company of California to him and specifically denies all the other allegations of fraud, scheme and conspiracy set out in said complaint, and represents and shows to this Honorable Court that all of said allegations are false and untrue and can be so proven upon trial of the merits of the matters and things set out in said complaint. That said matters and things have never been inquired into by a court of competent jurisdiction and that the debtor has never been afforded an opportunity to present his defense to the matters and things set up on said *compalint* and the causes of action therein set forth have never been heard by any court upon their merits. That the debtor within nine days after the entry of said default judgment made an application for permission to the California Court to file an answer and to be heard
84 upon the merits of the controversy, but such permission was denied and debtor has never been heard upon the merits of the controversy or the allegations in said complaint.

Wherefore, premises considered, debtor prays that the court inquire into and determine the value of the claim of the said M. E. Heiser underlying his judgment and that

said claim be allowed or disallowed according to the equities of the case and in accordance with fairness and justice.

LEONARD J. WOODRUFF, Debtor.

J. B. CHAMPION
THOS. W. CHAMPION
LOUIS A. FISCHL
Attorneys for Debtor

United States of America, Eastern District of Oklahoma, County of Carter, ss.

85 Leonard J. Woodruff, the debtor mentioned and described in the foregoing protest and objections, does hereby make solemn oath that the statements contained therein are true according to the best of his knowledge and belief.

LEONARD J. WOODRUFF

Subscribed and sworn to before me this the 2nd day of Sept. 1940.

MONTEREY LEEPER, Notary Public.

(Seal)

My commission expires: May 11, 1944.

Filed Sept. 10, 1940. Geo. F. Clark Referee.

85A [Exhibit A, judgment, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit A to proof of claim of M. E. Heiser, which appears at page 10.]

[Exhibit B, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit B to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 45.]

[Exhibit C, order on motion to vacate judgment, case No. 7256-C, United States District Court, Southern District of

California, Heiser v. Woodruff et al., is identical with exhibit C 1 to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 70.]

[Exhibit D, default judgment, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co. et al., is identical with exhibit D to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 73.]

[Exhibit E, certificate of sale of personal property, case No. 276469, Superior Court, Los Angeles County, California, Woodruff v. Golden State Gem Co., is identical with exhibit C to objections of Willie Mae Woodruff to allowance of claim of M. E. Heiser, which appears at page 69.]

Answer to Objections of Willie Mae Woodruff to Allowance and Approval of Claim of M. E. Heiser

Comes now M. E. Heiser and in response to the 86 protest and objections of Willie Mae Woodruff to the allowance and approval of said claimant's claim filed herein, says:

I.

That the said objector has filed a claim herein; that objections have been filed to said claim which has not been as yet allowed, and that said objector is therefore not in a position to object to the claim filed herein by this claimant.

II.

That on or about the 23rd day of August, 1939, P. M. Jackson, as a duly and regularly appointed, qualified and acting trustee in bankruptcy for the estate of said bankrupt, Leonard J. Woodruff, elected to contest and attack the said claim of this claimant, and did then and there elect the manner in which he desired to attack and contest the said claim, and the court wherein he desired to commence the said attack, contest and objection. Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson, as

such trustee, presented to the above entitled Honorable Court in bankruptcy, his application for authority and direction to institute legal action to vacate, set aside and invalidate the judgment upon which the said claim of this claimant is predicated, and for authority to employ counsel to represent him in such litigation. On the same day there was also filed herein, in the above entitled court, an application of creditors other than this claimant, but including the said objector herein, requesting that the said above entitled court direct the said trustee to take said legal steps, and contest the said claim of this claimant.

The above entitled bankruptcy court approved the said application and also the election of the said trustee in bankruptcy to contest the said claim, and the judgment, upon which it was predicated, of this claimant. In pursuance therewith the above entitled court then and there made
87 its order directing that the said trustee contest the said claim of this claimant; directing said trustee to contest the said claim in the court that rendered the said judgment; to wit: District Court of the United States, in and for the Southern District of California, Central Division. In said order the above entitled bankruptcy court found that the litigation necessary to test said judgment should be conducted in the State of California where said judgment was rendered. In said order it was further adjudged and decreed that the said trustee, P. M. Jackson, be authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to void the said judgment against the said bankrupt, Leonard J. Woodruff, and in favor of this claimant, upon which his claim on file herein is predicated, and which judgment was rendered in the said United States District Court in and for the Southern District of California, Central Division, Cause No. 7256-C, and this Honorable Court further ordered that said trustee be authorized to employ as his counsel in said matter, Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelley, of Los Angeles, California. Reference is made to the said order on file herein.

III.

That in pursuance of said order of this Honorable Bank-

ruptcy Court and its authorization and direction, and in pursuance of the said trustee's election of the manner and place in which he desired to contest the said claim of this claimant against the said bankruptcy, the said trustee, P. M. Jackson, did employ the services of the said Francis B. Cobb of Los Angeles, California, as attorney at law. Then said trustee, P. M. Jackson, did on or about September 11, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, *tucaidate*, and void the said judgment in favor of this claimant and against the said bankrupt, Leonard J. Woodruff. In said petition filed by the said trustee herein, it was claimed, asserted, and averred that the said court was without jurisdiction to enter the said judgment, for the reason that the summons was not properly served; that the said court did not have jurisdiction of the person of the judgment debtor; that the judgment was permanently entered; that the complaint is defective;
88 that the action was barred by laches; that the action was barred by the statute of limitations; that a fraud was practiced upon the court with respect to the entry of said judgment; that the said judgment was void against said trustee in bankruptcy under Section 67 (d) as amended, of the Bankruptcy Act; that said complaint does not state a cause of action against the said bankrupt; that the court erred in opening the case after judgment for the limited purpose of obtaining values of the property involved to the exclusion of all other defenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and the trustee in bankruptcy, P. M. Jackson, have a good and sufficient defense to plaintiff's alleged cause of action, and have been prevented from presenting said defense by reason of fraud, surprise and excusable neglect.

In said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors of the bankrupt herein have no right or privilege of defending or intervening with respect to said judgment, which said judgment said trustee alleged was based upon fictitious values and was obtained by methods which amounted to constructive fraud upon creditors and upon the trustee as representative of the

creditors; that none of the creditors of said bankrupt knew prior to the entry of said judgment that the alleged process had been served; that if the petition of the said trustee be granted that the said claim of M. E. Heiser, the claimant herein, can be defeated and the creditors of this estate will then receive a larger percentage of their claims; that the judgment entered in said court in favor of this claimant and against the bankrupt, Leonard J. Woodruff, is in the sum of $278,631.71, plus costs, which constitutes the claim herein of this claimant, and that the other claims against the above entitled estate, so far as is known to said trustee herein, was approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of this claimant is permitted to stand, in that the assets of the estate, so far as is known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00,
89 and that the known claims, including that of this claimant, are approximately *$1,100,00.00;* that the claimant will receive upon his said claim filed herein, approximately $100,000.00 in dividends that may hereafter be declared in this proceeding, to the detriment of the other creditors.

IV.

An answer was filed in said court by claimant, and also by his attorney, denying the allegations of the said petition; that thereafter, on the 26th day of September, 1939, the court conducted a hearing of the said matter presented by the said trustee, P. M. Jackson. The said trustee appearing by his counsel, Francis B. Cobb, and claimant herein, M. E. Heiser, appearing by his counsel; and evidence was introduced and argument was made by the said counsels, and then the case was submitted. Thereafter, on the same day the said court rendered judgment in favor of claimant therein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson.

V.

Thereafter, on or about the 29th day of September, 1939, said P. M. Jackson, the trustee in bankruptcy herein, appearing by Francis B. Cobb, his attorney, being dissatisfied

with the said decision and judgment, filed an appeal from the said judgment of the District Court of the United States in and for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District, pursuant to Rule 72, subdivision (a) and (b) of the Rules of Civil Procedure and Jud. Code, Sec. 128 (a), 28 U.S.C.A. 225(a); Rules of Civil Procedure for District Courts, Rule 55(a), (b) (2) 28, U.S.C.A. following Sec. 723(c). Said appeal was perfected in accordance with the law, and briefs were filed and submitted by the said trustee herein as the appellant, and the claimant herein filed his brief as appellee.

VI.

Said appeal came on regularly for hearing before the said United States Circuit Court of Appeals for the Ninth Circuit, and after argument of counsel for said trustee, P. M. Jackson, and the argument of counsel for this claimant, the matter was submitted for decision. Thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit made and filed its decision and order affirming the said judgment. That on or about the 31st day of May, 1940, the United States Circuit
90 Court of Appeals for the Ninth Circuit issued its mandate pursuant to the said decision and the same was duly and regularly filed in said court. Said opinion and decision of the United States Circuit Court of Appeals for the Ninth Circuit is reported in 111 Fed. (2) 310.

VII.

That in the said matter of Jackson v. Heiser in the said Circuit Court of Appeals in and for the Ninth District, No. 9356, instituted by the said P. M. Jackson, trustee in bankruptcy herein, in an appeal from the decision from the said United States District Court, in and for the Southern District of California, Central Division, which said judgment was in favor of claimant, M. E. Heiser, and against the said P. M. Jackson, trustee in bankruptcy herein, the said United States Circuit Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things as follows, to wit:

1. That the proceeding filed by the trustee in bankruptcy, P. M. Jackson, in the United States District Court in and for the Southern District of California, Central Division, was an independent action; that as such the said decision was a final decision and therefore appealable.

2. (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition thereto the defendant in said action appeared and participated therein, voluntarily submitted himself to the jurisdiction of the court, thereby waiving service.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. The complaint stated a cause for action.

7. The complaint was not otherwise defective.

8. The complaint did not show that the action was barred.

9. The defendant was not prevented from presenting a defense by reason of fraud, accident, surprise, or excusable neglect.

10. That there was no abuse of discretion by the court.

11. That the court did not err.

12. That the order or judgment of the District Court in and for the Southern District of California, Central Division, is affirmed.

That no rehearing was asked and that the time
91 within which a motion for rehearing can be made has expired; that no appeal was taken from the said judgment, and no writ was asked for, or obtained, from the Supreme Court of the United States in said matter; that time within which to have the said case reviewed in the Supreme Court of the United States has expired; that the said judgment of the said District Court of the United States in and for the Southern District of California, Cen-

tral Division, and of the Circuit Court of Appeals for the Ninth Circuit have become final; that the judgment for $278,631.71 against the bankrupt, Leonard J. Woodruff, upon which the claim of the claimant herein is predicated, has become final.

VIII.

Claimant says that the said judgment of the United States District Court in and for the Southern District of California, Central Division, in the proceedings instituted by P. M. Jackson, trustee in bankruptcy herein, and the said decision and judgment of the United States Circuit Court of Appeals for the Ninth Circuit, in its affirmance thereof upon appeal, are res adjudicata and conclusive of those matters which were determined in said litigation and those which might have been determined but were not presented; that the said judgments against the trustee in bankruptcy also bind the objector herein and all other creditors, and the said judgments are res adjudicata of Paragraphs (A), (B), (C), (D), (E), and (f) set out in the protests and objections of the objector herein to the allowances and approval of the claim of this claimant, and the said objector is estopped by the proceedings of the trustee in bankruptcy, P. M. Jackson.

That in the original action, No. 7256-C filed in the District Court of the United States in and for the Southern District of California, Central Division, this claimant M. E. Heiser, was plaintiff and the bankrupt, Leonard J. Woodruff, was defendant.

In the action filed by the trustee in bankruptcy herein, P. M. Jackson said trustee was petitioner and this claimant, M. E. Heiser, respondent.

In the appeal filed in the Circuit Court of Appeals
92 for the Ninth Circuit, cause No. 9356, the said trustee in bankruptcy, P. M. Jackson, was appellant and your claimant, M. E. Heiser appellee.

IX.

Specifically answering Paragraph (A) of said objections, claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending in the United

States District Court in and for the Southern District of California, Central Division, between this claimant as plaintiff and the bankrupt, Leonard J. Woodruff, as defendant, and for the same reason or cause of action as set forth in said objection by the objector herein, judgment was therein duly given and made, whereby the said matter alleged in Paragraph (A) was decided against the said bankrupt, Leonard J. Woodruff, and is res adjudicata of all the said matter set up in said objection (A). In said cause of action it was decided by said judgment that the allegations of this claimant's complaint in said case was true and that debtor, Leonard J. Woodruff, the bankrupt herein, did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser and to deprive him of gems of the value of $164,000.00. Said matter alleged in Paragraph (A) of said objection is concluded by said judgment which is now final.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, by order of this court on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding wherein he presented the same facts as are again set up in said objection (A) and asked the court to vacate and set aside the said judgment for said cause. Issues were formed and tried, then judgment was duly given by the said court against the said B. M. Jackson, trustee in bankruptcy, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, the trustee herein, being aggrieved by the said judgment, then appealed to the United States Circuit Court of Appeals for the Ninth Circuit, which said Appellate Court on the 30th day of April, 1940, affirmed the said judgment, as heretofore more particularly described herein.

That the attack upon the said judgment by the said
93 trustee in bankruptcy concludes and estops said objector to again present or assert the matter contained in said Paragraph (A), which was decided in and by the said prior judgments, which said judgments are now final.

X.

Specifically answering Paragraph (B), claimant says that

on the 8th day of June, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, between this claimant as plaintiff, and the bankrupt herein as defendant, an order or judgment was duly given and made, deciding that personal service of summons was had on the said Leonard J. Woodruff in said action, which is the same matter as that set out in Paragraph (B). That said judgment is final.

That on the 25th day of May, 1939, the said parties stipulated before the said court in said proceedings, for a trial, by the court of the issues representing the value of the gems that the defendant, the bankrupt herein, had fraudulently converted from this claimant. The stipulation provided that if the court found, after a hearing, that the gems were of less value than the amount of the judgment that it may be reduced accordingly and the defendant waived exemplary or punitive damages.

On the 29th day of June, 1939, a hearing and trial of said matter was conducted by the said court. The parties appeared by counsel and were present in the court. Evidence was introduced by both parties and after argument of counsel the court found that the value of the property was the amount fixed in the judgment.

The Circuit Court of Appeals, Ninth District, upon appeal by the trustee in bankruptcy herein, P. M. Jackson, as hereinbefore more fully described, decided on April 30, 1940, that Leonard J. Woodruff, the defendant in said action, was properly and personally served with summons. That even if he had not been properly served with process, by entering into said stipulation and by participating in the hearing the said defendant, Woodruff, waived such service and voluntarily submitted himself to the jurisdiction of the court. Said judgment is now final and objector is estopped thereby to question said matter herein and it is res adjudicata of the matter set up in Paragraph (B) by the objector.

94

On the 11th day of September, 1939, at Los Angeles, California, a proceeding was filed by the trustee herein, P. M.

Jackson, to have the said judgment, upon which this claimant's claim is predicated, vacated and set aside, and among the *reason* given was because no personal service of summons was had on the defendant, the said Leonard J. Woodruff. Thereafter, on the 26th day of September, 1939, judgment was duly given and made by said court deciding the matter against the said P. M. Jackson, the trustee in bankruptcy herein, and in favor of the claimant herein.

Thereafter the said P. M. Jackson, trustee, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit. That on the 30th day of April, 1940, said United States Circuit Court of Appeals for the Ninth Circuit, in a decision entered on that day, and mandate filed on the 31st day of May, 1940, decided that the said Leonard J. Woodruff was regularly and lawfully served with summons in said action. The said judgment is final. The said objector is therefore estopped to reassert and present the same matter herein because of the said litigation and objection heretofore made by the trustee in bankruptcy herein, P. M. Jackson.

XI.

Specifically answering Paragraph (C), claimant says that on the 11th day of September, 1939, at Los Angeles, California, the trustee herein, P. M. Jackson, by order of this court as hereinbefore set out, filed a proceeding in the District Court of the United States in and for the Southern District, Central Division, cause No. 7256 C, to have the said judgment upon which this claimant's claim is predicated herein, vacated and set aside. One of the reasons presented in said proceeding was because the complaint in the said action wherein the said judgment was entered, did not state a cause of action under the laws of the State of California, and that said complaint showed upon its face that it was barred by the statutes of limitations of the State of California before the filing thereof, which is the same subject matter as is now set up herein said Paragraph (C) of said objections. After a hearing on the 26th day of September, 1939, judgment was duly given and made by said court, deciding the said matter against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of your claimant.

Thereafter the said trustee, P. M. Jackson, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit. On the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit rendered its decision affirming the said judgment of the District Court of the United States in and for the Southern District of California, Central Division. Mandate was filed on the 31st day of May, 1940. In said decision the said appellate court expressly decided that the complaint in the said action did state a cause of action and that it was not barred by the statutes of limitation. Said judgment is final as herein before more expressly set out. That by the said proceeding said objector is therefore estopped by res adjudicata to again re-assert the same matter by the prior action of the trustee herein.

97

XII.

Specifically answering Paragraph (D), claimant says that the said judgment is not void on its face for the reason that the complaint was based upon *three* separate and specific causes of action and the judgment does not specify the cause upon which it was rendered. Claimant says that the same point was raised before the said District Court of the United States in and for the Southern District of California, Central Division, and decided against both the bankrupt and the trustee, P. M. Jackson, in cause No. 7256-C. Thereafter it was presented upon appeal to the said Circuit Court of Appeals for the Ninth Circuit, where the judgment of the lower court was affirmed in cause No. 9256.

XIII.

Answering Paragraph (E) of said objections, claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C in the United States District Court in and for the Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and the bankrupt, Leonard J. Woodruff, as defendant, the matter and facts alleged in Paragraph (E) was presented by the said Leonard J. Woodruff, and after due consideration by the court, judg-

98 ment was entered against the said defendant. In said cause of action it was decided that the allega-

tions of this claimant's complaint, filed in said case, were true and that the said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and deprive him of his said property by conversion. The said judgment is now final and the claimant's claim filed herein is based upon that judgment.

By instructions of this court P. M. Jackson, trustee in bankruptcy herein, did on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States in and for the Southern District of California, Central Division, cause No. 7256-C, file a proceeding to have the said judgment vacated and set aside, and the matter set out in said objection (E) was pleaded and set up therein as reasons therefor. Said facts were fully presented and, after due consideration by the said court, was decided against the said P. M. Jackson, trustee in bankruptcy, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of this claimant, on the 26th day of September, 1939. Thereafter said P. M. Jackson, trustee in bankruptcy herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment.

That the objector herein is thereby estopped to assert and present the matter contained in said Paragraph (E), which is the same as was decided against the trustee herein by the said prior judgments, in the said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final as hereinbefore more specifically set out. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it is waived, or it is res adjudicata, and the said judgments estop the said objector not only as to every ground of recovery or defense actually presented in the said action, or actions, but also as to every ground which might have been presented.

XIV.

Specifically answering Paragraph (F) of said objections, claimant says that on the 20th day of March, 1939, at Los

Angeles, California, in an action then pending, No. 7256-C,
in the United States District Court, Southern Dis-
97 trict of California, Central Division, between this
claimant, M. E. Heiser, as plaintiff, and the said bankrupt, Leonard J. Woodruff, as defendant, and for the same cause of action and based upon the same facts as are alleged in the said Paragraph (F), judgment was duly given and made, wherein the said matter alleged in said Paragraph (F) was presented by the defendant, Leonard J. Woodruff, the bankrupt herein, and after due consideration by the said court, was decided against him and is now res adjudicata of all of the said matter, and the objector is estopped thereby from again presenting the same herein.

In said cause of action it was decided that the allegations of this claimant filed in said case were true, and that the said Leonard J. Woodruff did enter a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment. Thereafter, P. M. Jackson, the trustee in bankruptcy herein, was ordered by this court to contest the judgment upon which the claim of this claimant is predicated and pursuant to the order of this court said P. M. Jackson, trustee in bankruptcy, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside, and alleged therein the same facts and reasons as those that are set forth in the said objection (F). Said facts were presented and after due consideration by the said court it was decided against him, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy herein, and in favor of this claimant on the 26th day of September, 1939.

Said P. M. Jackson, trustee, appealed from said judgment to the United States Circuit Court of Appeals for the Ninth Circuit, cause No. 9356, and said Appellate Court on the 30th day of April, 1940, affirmed the said judgment. Said judgment is now final as is hereinbefore set forth more specifically. The said objector is thereby estopped to assert

and present again the matter contained in said Para-
98 graph (F), which is the same facts as presented and decided against said trustee, by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, if any of the matter set out was not fully presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop said objector not only as to every ground of recovery or defense actually presented in the said action, or actions, but also as to every ground that might have been presented.

Wherefore, claimant asks that his claim on file herein be allowed.

M. E. Heiser, Claimant.
Mitchel S. Meyberg,
Leonard J. Meyberg,
Attorneys for claimant.

[Verified.]

Filed Sep. 23, 1940. Geo. F. Clark, Referee.

Answer to Objections of Leonard J. Woodruff to Allowance and Approval of Heiser Claim.

99 Comes now M. E. Heiser and in response to the protest and objections of the bankrupt, Leonard J. Woodruff, to the allowance of his claim filed herein says:

I.

That on or about the 23d of August, 1939, P. M. Jackson as the duly and regularly appointed, qualified and acting trustee in bankruptcy for the estate of said bankrupt, elected to contest and attack the said claim of respondent and then and there elected the manner in which he desired to attack and contest the same, and the court wherein he desired to commence the same. Pursuant thereto, on or about the said 23d day of August, 1939, the said P. M. Jackson, as such trustee, presented to this Honorable Court in Bankruptcy his application for authority and direction to institute legal action to vacate, set aside and invalidate the judgment upon which the said claim was predicated.

and for authority to employ counsel to represent him and the bankrupt in such litigation. On the same day there also was filed in said court an application of creditors, other than the said H. E. Heiser, requesting that the said above entitled court direct the said trustee to take the said legal steps. The above entitled Bankruptcy Court approved the said application and election of said trustee in bankruptcy to contest the said claim and judgment of the said L. E. Heiser. In pursuance therewith the above entitled court then and there made its order directing that the said trustee contest the said claim of this respondent and the judgment upon which it is predicated. This above entitled court did then and there make its order directing said trustee so to do in the court that rendered the said judgment, to wit: District Court of the United States, Southern District of California, Central Division.

100 In said order the above entitled Bankruptcy Court found that the litigation necessary to test said judgment should be conducted in the State of California where said judgment was rendered. That in said order it was adjudged and decreed that the trustee P. M. Jackson be authorized and directed to take such legal steps as may be proper and necessary under the law to vacate, set aside, and to void the said judgment of this respondent against the said bankrupt, Leonard J. Woodruff, rendered in the United States District Court in and for the Southern District of California, Central Division, that case being No. 7256-C in said court, and this Honorable Court further ordered that said trustee be authorized to employ as his counsel in said matter Francis B. Cobb, a member of the firm of Cobb, Campbell & Kelley of Los Angeles, California. Reference is made to the said order on file herein.

II.

That in pursuance of the said order of this Honorable Bankruptcy Court and its authorization and direction and in pursuance of the said trustee's election of the manner and place in which he desired to contest the said claim of this respondent against the said bankrupt, the said trustee, P. M. Jackson, did employ the services of the said Francis B. Cobb of Los Angeles, California, as its attorney. The objector herein, Leonard J. Woodruff, the bankrupt, did

then and there elect to contest the said claim filed herein by this claimant, M. E. Heiser, and for that purpose employed the services of the law firm of Cobb, Campbell & Kelley, of Los Angeles, California, who were the same attorneys that were engaged by the said trustee, P. M. Jackson. The said trustee, P. M. Jackson, together with said bankrupt and objector herein, Leonard J. Woodruff, did, on or about September 11, 1939, file in the District Court of the United States in and for the Southern District of California, Central Division, his petition to vacate, set aside, invalidate and void the said claim and judgment of respondent against the said bankrupt, Leonard J. Woodruff; that

in said petition and action in said proceeding filed
101 by the said trustee herein and joined in by the said
Leonard J. Woodruff, bankrupt herein, who is the objector herein, it was claimed, asserted and averred that the said court was without jurisdiction as to the defendant Woodruff to enter the said judgment in that summons was not properly served; that the court did not have jurisdiction of the person of the judgment debtor; that the judgment was *prematurely* entered; that the complaint is defective; that the action was barred by laches; that the action was barred by the statute of limtiations; that a fraud was practiced upon the court with respect to the entry of the said judgment; that the said judgment was void as against said trustee in bankruptcy under Section 67 (d) as amended, of the Bankruptcy Act; that said complaint does not state a cause of action against the said Leonard J. Woodruff; that the Court erred in opening the case after judgment for the limited purpose of obtaining values of the property involved to the exclusion of all other defenses; that the allowance of interest in said judgment is not supported by the complaint and is contrary to law; that the said Leonard J. Woodruff, bankrupt, and P. M. Jackson, trustee in bankruptcy for the Estate of Leonard J. Woodruff, have a good and sufficient defense to plaintiff's alleged cause of action, and have been prevented from presenting said defense by reason of fraud, surprise and excusable neglect.

In said proceedings said P. M. Jackson, trustee, further averred under oath that the other creditors of the bankrupt herein have no right or privilege of defending or intervening with respect to said judgment, which judgment said

trustee and the objector herein, Leonard J. Woodruff, the bankrupt, based upon fictitious values and was obtained by methods which amounted to constructive frauds upon creditors and upon the trustee as a representative of other creditors; that none of the creditors of the said bankrupt knew prior to the entry of the said judgment that the alleged process had been served; that if the petition of the said trustee be granted that the said claim of M. E. Heiser

102 can be defeated and the creditors of this estate will then receive a large percentage of their claims; that the judgment entered in the said court in favor of this respondent and against the bankrupt, Leonard J. Woodruff, is in the sum of $278,631.71, plus costs, which constitute the claim herein of this respondent and that the other claims against the above entitled estate, so far as known to the said trustee herein, are approximately $800,000.00; that the other creditors in the above entitled estate will suffer irrevocable injury and a substantial loss of their claims if the judgment in favor of this respondent is permitted to stand, in that the assets of the estate, so far as known to the said P. M. Jackson, trustee, will not exceed the sum of approximately $400,000.00, and that the known claims, including that of this respondent, are approximately one million one hundred thousand dollars; that this respondent will receive upon his said claim filed herein approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors.

III.

That in said proceeding the said P. M. Jackson, trustee, and the objector, Leonard J. Woodruff, presented as cause to vacate the said judgment, facts as are set out in Paragraphs (E), (F), (G), (I); (J), (K), and (L) of the objections herein, which claimant says are false and untrue. Said matters were placed before the said court and the court duly considered them before it decided that said facts were untrue, and that the said Leoanrd J. Woodruff did participate in a scheme and conspiracy to defraud this claimant and to deprive him of his said property by conversion. The defense that said objector claims herein to have, was presented and considered by the court but the court did not believe the said facts to be true.

IV.

103 An answer filed by your claimant and also by his attorney denying the allegations of the said petition. That thereafter the trial and hearing on the said petitions and cause instituted by the said trustee, P. M. Jackson, and by the bankrupt, Leonard J. Woodruff, came before the United States District Court for the Southern District of California, Central Division, on the 26th day of September, 1939, the said trustee appearing by his counsel, Francis B. Cobb, and the said bankrupt, Leonard J. Woodruff, appearing by his counsel, Edward Fitzpatrick and Hiram Casey, and Willie Mae Woodruff, Howard Woodruff appearing by their counsel, Mark Feiler, certain creditors of the bankrupt estate appearing by their counsel, and your claimant herein, M. E. Heiser, appearing by his counsel, and evidence was introduced, and argument was made by the said counsel, and the case submitted. Thereafter on the said day the said court rendered judgment in favor of respondent, the claimant herein, M. E. Heiser, and against the said trustee in bankruptcy herein, P. M. Jackson, and against the said bankrupt, Leonard Woodruff.

V.

Thereafter on or about the 29th day of September, 1939, said P. M. Jackson, trustee in bankruptcy herein, appearing by Francis B. Cobb, attorney, and the said Leonard J. Woodruff, the bankrupt herein, appearing by Edward Fitzpatrick, and Cobb, Campbell & Kelley, his attorneys being dissatisfied with the said decision, filed an appeal from the said judgment of the District Court of the United States for the Southern District of California, Central Division, to the United States Circuit Court of Appeals for the Ninth District pursuant to Rule 73, subdivision (a) and (b) of the Rules of Civil Procedure and Jud. Code, Sec. 128 (a) 28 U. S. C. A. 225 (a); Rules of Civil Procedure for District Courts, Rule 55 (a), (b), (2) 28 U. S. C. A. following Sec. 723 (c). The said appeal was perfected in accordance with the law and briefs were submitted by the said trustee herein, and the said Leonard J. Woodruff, bankrupt herein, each as the appellants, and respondent, the claimant herein, filed his brief as appellee.

VI.

104 The said matter came on regularly for hearings before the said United States Circuit Court of Appeals for the Ninth Circuit, and after hearing arguments of counsel for said trustee in bankruptcy, P. M. Jackson, and for said Leonard Woodruff, the bankrupt herein and argument of attorney for your affiant the same was submitted for decision by the court. Thereafter on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth Circuit, made and filed its decision and order affirming the said judgment; that thereafter on or about the 31st day of May, 1940, the said United States Circuit Court of Appeals for the Ninth District issued its Mandate pursuant to the said decision, and the same was duly and regularly filed in said court. No rehearing was requested and no appeal to the United States Supreme Court was taken. The time therefor has expired, and the said judgment is final.

VII

That in the said Circuit Court of Appeals in and for the Ninth District, No. 9356, the appeal instituted by the said P. M. Jackson, trustee in bankruptcy herein, and the bankrupt herein, Leonard J. Woodruff, from the decision of the United States District Court, Southern District of California, Central Division, which was in favor of respondent, M. E. Heiser, claimant herein, and against the said P. M. Jackson, trustee, and the said bankrupt in the said proceedings commenced by the said P. M. Jackson, trustee, and by and joined in by the said Leonard J. Woodruff, bankrupt herein, in the said District Court for the Southern District of California, the said United States Court of Appeals in and for the Ninth Circuit filed its written opinion deciding among other things that, to wit:

1. The action of the said trustee and the said bankrupt in the United States District Court for the Southern District of California was an independent action or proceeding; that as such the said decision rendered herein by said District Court was a final decision.

105 (a) The judgment was obtained with valid service of process.

(b) The service was valid.

(c) In addition the defendant Woodruff appeared in the said action and participated therein, waived service and voluntarily submitted himself to the jurisdiction of the court.

3. The judgment was not obtained by fraud.

4. The judgment was not prematurely entered.

5. The judgment was not otherwise erroneous.

6. The complaint stated a cause of action.

7. The complaint was not otherwise defective.

8. The complaint did not show that the action was barred.

9. Neither the trustee, P. M. Jackson, nor the bankrupt, Leonard J. Woodruff, was prevented from presenting defense by reason of fraud, accident, surprise or excusable neglect.

10. That there was no abuse or discretion by the court.

11. That the court did not err

12. That the order of the District Court for the Southern District of California is affirmed, which order denied the attack upon the said judgment and claim in the proceeding commenced in the said court by the said trustee, P. M. Jackson, and by and joined in by the said bankrupt, Leonard J. Woodruff, and decided in favor of your claimant, M. E. Heiser, respondent herein.

VIII.

That no rehearing of the said matter was asked of the Circuit Court of appeals for the Ninth Circuit and the time the motion for rehearing could be filed has expired. That no appeal was taken from the said judgment of the said United States Circuit Court of Appeals for the Ninth District, and no writ asked for or obtained from the Supreme Court of the United States in said matter. That time within which to have the said case reviewed in the Supreme Court of the United States has expired. That the said judgment of the said District Court of the United States for the Southern District of California in favor of M. E. Heiser, claimant

herein, and against Leonard J. Woodruff, bankrupt herein, in the amount of $278,631.71, has become final.

106 That the decision of the District Court of the United States for the Southern District of California in favor of claimant herein and against P. M. Jackson, trustee, and Leonard J. Woodruff, bankrupt herein, upon the said action and proceeding instituted and filed in the said court by the said P. M. Jackson, trustee herein, pursuant to his election and the order of the above entitled court in bankruptcy directing the said litigation to vacate, set aside, invalidate and void said claim and judgment of the claimant, M. E. Heiser, has become final.

IX

Respondent says that the said judgment of the United States District Court for the Southern District of California, Central Division, in the proceedings instituted by P. M. Jackson, trustee in bankruptcy, and the bankrupt, Leonard J. Woodruff, who is the objector to the claim of respondent, M. E. Heiser herein, and the decision and judgment of the United States Circuit Court Appeals for the Ninth Circuit upon appeal are res adjudicata and conclusive of those matters which were determined in said litigation and those which might have been determined but were not presented, and that the said judgments are res adjudicata of Paragraphs (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), and (L) set out in the protest and objections of the bankrupt, Leonard J. Woodruff, to the allowance and approval of the claim of respondent, M. E. Heiser, and that the said Leonard J. Woodruff, the objector to said claim, is estopped because of the matter hereinbefore set out.

That in the original action, No. 7256-C, filed in the District Court of the United States, Southern District of California, Central Division, claimant, M. E. Heiser, was plaintiff and the objector, Leonard J. Woodruff, and bankrupt, was defendant.

In the action filed by the objector Leonard J. Woodruff, together with the trustee in bankruptcy, P. M. Jackson, they were petitioners and claimant, M. E. Heiser, respondent.

107 In the appeal filed in the Circuit Court of Appeals, Ninth Circuit, Cause No. 9356, the said objector herein, Leonard J. Woodruff, together with the said trustee, were appellants and your claimant, M. E. Heiser, appellee.

X.

Specifically answering Paragraph (A) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said objection, the said court had jurisdiction of the subject matter and of the person of objector. Judgment was therein duly given and made whereby the said matter alleges in said Paragraph (A) was decided against the said objector, Leonard J. Woodruff, and is res adjudicata of all the said matter set up in said objection (A). In said cause of action it was decided by said judgment that the allegations of this claimant's complaint in said case were true, and that debtor, Leonard J. Woodruff, did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of gems of the value of $164,000.00. Said matter is concluded by said judgment which is now final.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding partly based upon the same facts as are again set up in said objection (A) to have the said judgment vacated and set aside. Issues were formed and tried, then judgment was duly given and made by said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

108 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, then appealed from the said judgment to the United States Circuit Court of Ap-

peals for the Ninth District, and the said United States Circuit Court of Appeals for the Ninth District on the 30th day of April, 1940, affirmed the said judgment.

That the objector, Leonard J. Woodruff, is thereby concluded and estopped to assert the matter contained in said paragraph, which is the same as was decided in and by the said prior judgments. Said judgments are now final.

XI.

Specifically answering Paragraph (B) claimant says that on the 8th day of June, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, between this claimant, M. E. Heiser, and the objector, Leonard J. Woodruff, an order or judgment was duly given and made deciding that personal service of summons was had upon the said Leonard J. Woodruff in said action, which is the same as that set out in said Paragraph (B). That said judgment is final.

That on the 25th day of May, 1939, through and by his attorneys, the said objector, Leonard J. Woodruff, stipulated before the said Court in said proceedings, for a trial by the Court of the issues respecting the value of the gems that the objector, Leonard J. Woodruff, had fraudulently converted from this claimant. This claimant by and through his counsel also stipulated to such hearing and waived exemplary damages. It was stipulated that the Court hold a hearing and if it found that the said gems were of less value than the amount of the judgment that the said judgment may be reduced accordingly.

On the 29th day of June, 1939, such hearing and trial was conducted by the said court. The objector, Leonard J. Woodruff appeared by counsel and was present in person. Claimant, M. E. Heiser, was also represented by counsel; evidence was introduced by both parties and after argument the Court found the value of the property to be the amount fixed in the judgment.

109 The Circuit Court of Appeals, Ninth Circuit, on appeal by the said objector, Leonard J. Woodruff, and the

trustee herein, decided on April 30, 1940, that the said objector, Leonard J. Woodruff, was properly and personally served with summons. Furthermore, even if not validly served with process, by entering into said stipulation and by participating in the hearing, Woodruff waived such service and voluntarily submitted himself to the jurisdiction of the Court. Said judgment is now final and objector is estopped thereby to question said matter herein.

That thereafter, on the 11th day of September, 1939, at Los Angeles, California, in an action then pending in the District Court of the United States for the Southern District of California, Central Division, the trustee herein, P. M. Jackson, together with the said objector, Leonard J. Woodruff, filed a proceeding to have the said judgment upon which this claimant's claim is predicated vacated and set aside, because no personal service of summons was had upon the defendant, the said Leonard J. Woodruff. Thereafter on the 26th day of September, 1939, judgment was duly given and made by said court, deciding the matter against the said P. M. Jackson, the trustee in bankruptcy herein, and the said Leonard J. Woodruff, the objector herein.

Thereafter the said P. M. Jackson and the said Leonard J. Woodruff appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District. That on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth District, in a decision rendered on that day, and mandate filed on the 31st day of May, 1940, decided that the said Leonard J. Woodruff, the objector herein, was regularly and lawfully personally served with summons in said action. That said judgment is final.

That the said objector is therefore estopped to again reassert the same matter.

XII.

110 Specifically answering Paragraph (C) claimant says that on the 11th day of September, 1939, at Los Angeles, California, the trustee herein, P. M. Jackson, together with the said objector, Leonard J. Woodruff, filed a proceeding in the District Court of the United States for the

Southern District of California, Central Division, Cause No. 7256-C, to have the said judgment, upon which this claimant's claim is predicated, vacated and set aside because the complaint in the said action does not state a cause of action under the laws of the State of California, and that said complaint showed upon its face that it was barred by the statute of limitations of the State of California before the filing thereof, which is the same matter as set up herein in said Paragraph (C). After a hearing on the 26th day of September, 1939, judgment was duly given and made by said court deciding the said matter against the said P. M. Jackson, the trustee in bankruptcy herein, and the said Leonard J. Woodruff, the objector herein.

Thereafter the said trustee, P. M. Jackson, and the said objector, Leonard J. Woodruff, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District. That on the 30th day of April, 1940, the said United States Circuit Court of Appeals for the Ninth District rendered its decision affirming the said judgment of the District Court of the United States for the Southern District of California, Central Division. Mandate was filed on the 31st day of May, 1940. Said judgment is final.

That the said objector is therefore estopped by res adjudicata to again reassert the same matter herein.

XIII.

Specifically answering Paragraph (D) claimant says that the said judgment is not void on its face for the reasons stated that the complaint was based upon three separate and specific causes of action and that the judgment does not specify the cause of action upon which the same was rendered. Claimant says that the said judgment is not void on its face as alleged by the said objector. That the same matter was raised before the said District Court of the United States, Southern District, Central Division, and decided against objector in Cause No. 7256-C. Thereafter it was presented upon appeal to the said Circuit Court of Appeals, Ninth Circuit where the judgment of the lower court was affirmed, Cause No. 9356.

111

XIV.

Specifically answering Paragraph (E) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (E) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (E). Said facts were presented and after due consideration by the said Court was decided against
112 them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day

of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (E), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XV.

Specifically answering Paragraph (F) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (F) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res Adjudicata of all the said matter, and said objector is estopped thereby from again pre-
113 senting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding

to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (F). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (F), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to
114 every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVI.

Specifically answering Paragraph (G) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256 C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (G) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same

herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (G). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

115 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (G), which is the same as was decided against him by the said prior judgments in the said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVII.

Specifically answering Paragraph (H) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (H) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles,
116 California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (H). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector,

Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (H), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XVIII.

Specifically answering Paragraph (I) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (I) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter,

117 and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection

(1). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objection herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (I), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is re adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XIX.

118 Specificially answering Paragraph (J) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (J) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard

J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (J). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (J), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XX.

119 Specificially answering Paragraph (K) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then

pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (K) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimant's complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (K). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by the said court against said P. M. Jackson, trustee in bankruptcy, and said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

120 Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (K), which is the same as was decided against him by the

said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during the said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XXI.

Specifically answering Paragraph (L) of said objections claimant says that on the 20th day of March, 1939, at Los Angeles, California, in an action then pending, No. 7256-C, in the United States District Court, Southern District of California, Central Division, between this claimant, M. E. Heiser, as plaintiff, and said objector, Leonard J. Woodruff, defendant, and for the same cause of action as that set forth in said paragraph herein, judgment was duly given and made whereby the said matter alleged in said Paragraph (L) was presented by said Leonard J. Woodruff, and after due consideration by the said court was decided against the said objector, and is res adjudicata of all the said matter, and said objector is estopped thereby from again presenting same herein. In said cause of action it was decided that the allegations of this claimants complaint filed in said case were true and that said Leonard J. Woodruff did participate in a scheme and conspiracy to defraud this claimant, M. E. Heiser, and to deprive him of his said property by conversion. Said judgment is now final. Claimant's claim herein is based upon that judgment.

121 Thereafter P. M. Jackson, the trustee in bankruptcy herein, together with the said objector, Leonard J. Woodruff, on the 11th day of September, 1939, at Los Angeles, California, in the District Court of the United States, Southern District of California, Central Division, filed a proceeding to have the said judgment vacated and set aside for the same reasons and facts as that are now set forth in the said objection (L). Said facts were presented and after due consideration by the said Court was decided against them, and judgment was duly given and made by

the said court against the said P. M. Jackson, trustee in bankruptcy, and the said Leonard J. Woodruff, the objector herein, and in favor of this claimant, M. E. Heiser, on the 26th day of September, 1939.

Said P. M. Jackson, trustee, and the said Leonard J. Woodruff, the objector herein, appealed from the said judgment to the United States Circuit Court of Appeals for the Ninth District, No. 9356, which said court on the 30th day of April, 1940, affirmed the said judgment. That the objector, Leonard J. Woodruff, is thereby estopped to assert and present the matter contained in said Paragraph (L), which is the same as was decided against him by the said prior judgments in said District Court of the United States and the said Circuit Court of Appeals, all of which judgments are now final. Further, that if any of the matter set out was not presented to the aforesaid courts during said litigation, it was waived, or it is res adjudicata, and the said judgments estop the said objector, not only as to every ground of recovery or defense actually presented in the said action or actions, but also as to every ground which might have been presented.

XXII.

This claimant says that the objector litigated substantially all of the matters that are the subject of his objections in Cause No. 7256-C in the District Court of the United States, Southern District of California, Central Division, and upon which judgments were rendered in favor of claimant and against the said objector on the 20th day of March, 1939; the 8th day of June, 1939, and the 29th day of June, 1939, also judgment rendered against the said objector and the trustee in bankruptcy herein, P. M. Jackson, on the 26th day of September, 1939, and in addition thereto on an appeal by the said P. M. Jackson and Leonard J. Woodruff to the United States Circuit Court of Appeals for the Ninth Circuit, and judgment of said court in favor of your claimant, M. E. Heiser, in which it includes the said parties and those in privy with them, not only as to every matter which was offered and received to sustain or defeat the matter, but as to any other matter which might have been offered for that purpose. The said judgments estopped them not only as to

every ground of recovery or defense actually presented, but also as to every ground which might have been presented.

122 By said objections the said objector, Leonard J. Woodruff, asks this court to retry the said cause of action which has heretofore been finally adjudged by the District Court of the United States for the Southern District of California, Central Division, and on appeal by the United States Circuit Court of Appeals for the Ninth District upon attack by the said P. M. Jackson, trustee, and the objector herein, Leonard J. Woodruff, the bankrupt.

Wherefore, claimant asks that his claim on file herein be allowed.

M. E. HEISER, Claimant.

MITCHELL S. MEYBERG,
LEONARD J. MEYBERG,
Attorneys for Claimant.

[Verified.]

Filed Sep. 23, 1940. Geo. F. Clark, Referee.

Amendments to the Objections of Willie May Woodruff to the Claim of M. E. Heiser

123 Comes now the objector, Willie May Woodruff, and leave of the Court being had and obtained, files this amendment to her objections to the claim of M. E. Heiser, and for such amendment and in addition to all of the matters and things alleged and set out in her original objections to said claim, alleges and says that the claim of M. E. Heiser filed herein should be denied or substantially reduced in amount on account of the following matters and things, to-wit:

The claimant, M. E. Heiser, was guilty of fraud upon the Court and upon the parties to the action, and guilty of perjury in the obtaining of said judgment, in that, he alleged in his complaint, and apparently testified under oath in the District Court of the United States, in and for the Southern District of California, on the 20th day of March, 1939, that in June and July, 1928, he was possessed of twelve hundred (1200) ounces of blue sapphires rough; one thousand (1000)

ounces of star sapphires rough; twelve hundred (1200) ounces of opals, black and light, rough; one thousand (1000) ounces of zircons rough, and one (1) piece of jade, 28 pounds, which property he alleged was of a value in excess of One Hundred Thirty Thousand Dollars ($130,000.00), and that he deposited said gems in the United States National Bank, at Eighth and Spring Streets, Los Angeles, California, whereas, in truth and in fact the said M. E. Heiser was not possessed of said gems above described at the time, and did not deposit the same in said bank, and this objector is now prepared to prove, in support of her objections, by competent evidence that the said M. E. Heiser did not possess said gems at said time and did not deposit the same, or gems of like quantity and value, in said bank, as alleged in his complaint and as testified to by him in order to obtain the judgment which he obtained against the debtor herein.

124 The said M. E. Heiser filed his claim, in the matter of the bankruptcy of the Golden State Gem Company of California, for the gems or stones which he did deposit in the United States National Bank, at Eighth and Spring Streets, Los Angeles, California, and said claim was fixed in amount at Thirty Thousand Dollars ($30,000.00), which at the time of the filing of the claim was alleged to be the true value of the gems so deposited in said bank.

Thereafter, the said M. E. Heiser testified, in support of said claim in bankruptcy, that certain of the property which he deposited in said bank, of the value of Sixty-nine Thousand Dollars ($69,000.00), was omitted from said claim by inadvertance, and that as a matter of fact the value of said property so deposited in said bank and as thus claimed by the said M. E. Heiser under oath was Ninety-nine Thousand Dollars ($99,000.00).

Thereafter, the said M. E. Heiser testified in a suit which he brought against one Maude Lollar Graves, in the Superior Court of the State of California, in and for the City and County of San Francisco, and being case No. 238348 in said court, and in which was involved the question as to the value of said property described in paragraph 6 of the complaint of said Heiser in said suit against the debtor herein,

wherein he obtained judgment, that said gems were worth approximately One Hundred and Three Thousand Dollars ($103,000.00); that said Heiser testified in the action in which he obtained his judgment that the same were worth in excess of One Hundred Eighty Thousand Dollars ($180,000.00); that the value so placed upon said stones by the said M. E. Heiser varied from Thirty Thousand Dollars ($30,000.00) to One Hundred Eighty Thousand Dollars ($180,000.00), the value so fixed being the value as of the date of the alleged conversion. This objector alleges that in truth and in fact the gems or stones which were deposited by the said M. E. Heiser in the United States National Bank, Eighth and Spring Streets, Los Angeles, California, as alleged in said complaint, upon which his judgment is based (the title to which afterwards passed to the Golden State Gem Company) was never at any time as much as Thirty Thousand Dollars ($30,000.00), and if the said M. E. Heiser has a meritorious claim against the debtor herein it does not exceed Thirty Thousand Dollars ($30,000.00) in amount.

125 Wherefore, this objecting creditor prays that the claim of said M. E. Heiser be disallowed, but that if the same is not disallowed, it be reduced to conform to the value of the property which the said M. E. Heiser possessed, and that the amount of the judgment upon which the claim is based, which is fictitious and unwarranted, and which was secured upon perjured testimony given by the claimant, be disallowed and disapproved, and that she have such other and further relief to which she may be and appear entitled.

WILLIE MAY WOODRUFF,
Objector.
W. W. POTTER,
Attorneys for the Objector
Willie May Woodruff.

Subscribed and sworn to before me this the 31st day of December, 1940, by Willie May Woodruff, to the best of her belief. Leona Dettia, Notary Public in and for Los Angeles County California. My commission expires August 20, 1941. (Seal).

Filed January 30, 1941, Geo. F. Clark, Referee.

Amendments to the Objections of Ida Belle Woodruff to the Claim of M. E. Heiser.

126 Comes now the objector, Ida Belle Woodruff, and leave of the court being had and obtained, files this amendment to her objections to the claim of M. E. Heiser, and for such amendment and in *adition* to all of the matters and things alleged and set out in her original objections to said claim, alleges and says that the claim of M. E. Heiser filed herein should be denied or substantially reduced in amount on account of the following matters and things, to-wit:

The claimant, M. E. Heiser, was guilty of fraud upon the court and upon the parties to the action, and guilty of perjury in the obtaining of said judgment, in that, he alleged in his complaint, and apparently testified under oath in the District Court of the United States in and for the southern District of California, on the 20th day of March, 1939, that in June and July, 1928, he was possessed of twelve hundred (1200) ounces of blue sapphires rough; one thousand (1000) ounces of star sapphires rough; twelve hundred (1200) ounces of opals, black and light, rough; one thousand (1000) ounces of zircons rough, and one (1) piece of jade, 28 pounds, which property he alleged was of a value in excess of One Hundred Thirty Thousand Dollars (130,000) and that he deposited said gems in the United States National Bank, at *Eigth* and Spring Streets, Los Angeles, California, whereas, in truth and in fact the said M. E. Heiser was not possessed of said gems above described at the time, and did not deposit the same in said bank, and this objector is now prepared to prove, in support of her objections, by competent evidence that the said M. E. Heiser did not possess said gems at said time and did not deposit the same, or gems of like quantity and value, in said bank, as alleged in his complaint and as testified to by him in order to obtain the judgment which he obtained against the debtor herein.

The said M. E. Heiser filed his claim, in the matter of the bankruptcy of the Golden State Gem Company of California, for the gems or stones which he did deposit in the United States National Bank, at Eighth and Spring Streets, Los

Angeles, California, and said claim was fixed in
127 amount at Thirty Thousand Dollars (30,000), which at the time of the filing of the claim was alleged to be the true value of the gems so deposited in said bank.

Thereafter, the said M. E. Heiser testified, in support of said claim in bankruptcy, that certain of the property which he deposited in said bank, of the value of Sixty-nine Thousand Dollars (69,000) was omitted from said claim by inadvertence, and that as a matter of fact the value of said property so deposited in said bank and as thus claimed by the said M. E. Heiser under oath was Ninety-nine Thousand Dollars (99,000).

Thereafter, the said M. E. Heiser testified in a suit which he brought against one Maude Lollar Graves, in the Superior Court of the State of California, in and for the City and County of San Francisco, and being case no. 238348 in said court, and in which was involved the question as to the value of said property described in paragraph 6 of the complaint of said Heiser in said suit against the debtor herein, wherein he obtained judgment, that said gems were worth approximately One Hundred and Three Thousand Dollars (103,000); that said Heiser testified in the action in which he obtained his judgment, that the same were worth in excess of One Hundred Eighty Thousand Dollars (180,000); that the value so placed upon said stones by the said M. E. Heiser varied from Thirty Thousand Dollars (30,000) to One Hundred Eighty Thousand Dollars (180,000), the value so fixed being the value as of the date of the alleged conversion. This objector alleges that in truth and in fact the gems or stones which were deposited by the said M. E. Heiser in the United States National Bank, Eighth and Spring Streets, Los Angeles, California, as alleged in said complaint, upon which his judgment is based (the title to which afterwards passed to the Golden State Gem Company) was never at any time as much as Thirty Thousand Dollars (30,000), and if the said M. E. Heiser has a meritorious claim against the debtor herein it does not exceed Thirty Thousand Dollars (30,000) in amount.

Wherefore, this objecting creditor prays that the claim of said M. E. Heiser be disallowed, but that if the same is

not disallowed, it be reduced to conform to the value of the property which the said M. E. Heiser possessed, and that the amount of the judgment upon which the claim is
128 based, which is fictitious and unwarranted, and which was secured upon perjured testimony given by the claimant, be disallowed and disapproved, and that she have such other and further relief to which she may be and appear entitled.

W. W. Potter, Attorney for Ida Belle Woodruff, Objector.

[Verified.]

Filed Jan. 30, 1941. Geo. F. Clark, Referee.

Order Disallowing Unsecured Claim of M. E. Heiser.

129 At McAlester, in said District, on the 4th day of October, 1943.

Upon consideration of the unsecured claim of M. E. Heiser, objections thereto, evidence, and brief of counsel.

It Is Ordered that the unsecured claim of M. E. Heiser, filed against the estate of the above named bankrupt, be, and the same is, hereby disallowed.

Geo. F. Clark,
Referee in Bankruptcy.

Filed Oct. 4, 1943. Geo. F. Clark, Referee.

Order Allowing Unsecured Claim of Wille May Woodruff.

130 At McAlester, in said District, on the 4th day of October, 1943.

Upon consideration of the unsecured claim of Wille May Woodruff, objections thereto, evidence and briefs of counsel,

It is ordered that the unsecured claim of Wille May Woodruff, filed against the estate of the above named bankrupt, be, and the same is hereby, allowed for the sum of $812.-176.15, being principal sum of $477.750.68, with interest

thereon at 7% per annum from 1929 to 1939, amounting to $334,425.47.

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Oct. 4, 1943. Geo. F. Clark, Referee.

Petition by M. E. Heiser for the Review of the Order of the Honorable Geo. Clark, Referee in Bankruptcy, Disallowing the Judgment Claim of M. E. Heiser, and Assignments of Error.

131 Comes now M. E. Heiser, a creditor herein, having on file herein a claim based upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and affirmed by the Circuit Court of the United States, in and for the Ninth Circuit in 111 Fed. (2) p. 310, entitled P. M. Jackson, Trustee, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee, and petitions for a review of the order of the Honorable Geo. Clark as Referee in Bankruptcy herein, filed herein on October 4, 1943, disallowing the claim of M. E. Heiser, said order being the only order made by the said Honorable Referee disallowing the claim of M. E. Heiser, and being in words, figures, letters and form as follows, to wit:

[The order appears at page 127.]

132 The undersigned M. E. Heiser, petitioner herein, feeling aggrieved at said order, petitions for review of same by the District Court of the United States for the Eastern District of Oklahoma and by a District Judge thereof. Your petitioner hereby assigns and designates as error committed by said Honorable Referee in Bankruptcy, and the said order complained of is hereby designated as erroneous, among other things, for the following reasons and in the following particulars:

(a) That the Honorable Referee in Bankruptcy is without jurisdiction to retry the case on the merits, to wit: The case out of which the judgment of the District Court of the

United States for the Southern District of California, Central Division, had entered its judgment in the matter of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, et al., defendants, which judgment had been appealed by P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a bankrupt, the bankrupt herein, and by Leonard J. Woodruff the bankrupt herein to the United States Circuit Court of Appeals for the Ninth Circuit, and which judgment of the said District Court of the United States had been therein by the said Circuit Court of Appeals of the United States, for the Ninth Circuit, affirmed.

(b) That the creditors who object to the claim of M. E. Heiser were bound by the result of the acts of their Trustee P. M. Jackson who, pursuant to the request of all creditors other than M. E. Heiser and under order of the Honorable Geo. Clark, Referee in Bankruptcy, had heretofore tested the sufficiency of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, as given in the District Court of the United States for the Southern District of California, Central Division, on appeal and by equity attack in the United States Circuit Court of Appeals for the Ninth Circuit and were bound by the result of such proceeding.

133 (c) That the objectors, and each of them, were bound, and the Referee was bound by the rule of law that it is not possible to make a collateral check on a final judgment which was res adjudicata of the facts and of the law against the Bankrupt and the Trustee after said proceedings, and that the Referee in Bankruptcy and this Court could not legally attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter after that judgment had been unsuccessfully attacked first by a review taken therefrom by the Bankrupt and second, by a review taken by the Trustee in Bankruptcy herein, P. M. Jackson, as Trustee of the Bankrupt Estate of Leonard J. Woodruff, upon authority of the Honorable Referee herein and by his order granting the petition of said Trustee and all of the creditors of said Bankrupt Estate excepting M. E. Heiser, and after the institution and maintenance and determination of an independent equitable pro-

ceeding attacking said judgment, which independent equity attack had been fully determined by the said Circuit Court of Appeals (111 Fed. (2) p. 310) was a final judgment prior to the trial of the objections now made to the claim of M. E. Heiser.

(d) That in disallowing the claim of M. E. Heiser, the Honorable Referee in Bankruptcy refused to apply the law, to-wit: That the judgment which was the basis of the claim of M. E. Heiser as filed herein, was a final judgment and adjudicated fully and finally the matters and things which were the subject matter of the case in which the judgment was rendered, and that it was beyond the legal power and authority of the Referee in Bankruptcy to reverse or review, modify, order or change the said judgment as rendered by the District Court of the United States for the Southern District of California, and as affirmed on review by the United States Circuit Court of Appeals for the Ninth Circuit (111 Fed. (2) p. 210).

134 (e) That the Referee in Bankruptcy in making the order disallowing the claim of M. E. Heiser erred in that he did not hold that the bankrupt Leonard J. Woodruff and his Trustee in Bankruptcy, P. M. Jackson, and each of them, were estopped by the judgment of the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of M. E. Heiser vs. Leonard J. Woodruff, Bankrupt, known in the said United States Circuit Court of Appeals for the Ninth Circuit as P. M. Jackson, as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee and Respondent (111 Fed. (2) p. 310), in that the said Leonard J. Woodruff and P. M. Jackson as Trustee in Bankruptcy herein filed and participated in said appeal and were bound by the result of said litigation, not only in the United States Circuit Court of Appeals for the Ninth Circuit but also by the final judgment by the United States District Court for the Southern District of California in the said case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, et als, Defendants.

(f) That the said Honorable Referee in Bankruptcy erred in refusing to recognize and apply the rule of law that "full faith and credit shall be given by every state to the

laws of every other state," and the application of such law as heretofore decreed to apply in the District Courts of the United States. That the said Honorable Referee in Bankruptcy erred in not applying the rule of full faith and credit to the final judgment of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant, which judgment as affirmed, and appealed, by the United States Circuit Court of Appeals for the Ninth Circuit was the basis of the claim as filed herein as the claim of M. E. Heiser, and was the basis of the supplement to the claim of M. E. Heiser filed herein.

135 (g) That the alleged creditors who filed the objections herein, upon which the order is sought by this petition to be reviewed, are not parties, nor any of them parties, who may legally and properly object to the claim of M. E. Heiser, petitioner herein, there being in this case a Trustee duly elected and qualified who has heretofore made the same objections unsuccessfully after authorization and order of the Honorable Referee herein that he do so, such order being based upon petition of such creditors for such order, the rule of law being that only when a Trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim, under such circumstances can an order be made permitting a creditor to act independently, but only when the Trustee himself has not acted. In this case the Trustee selected the forum to attack the said Heiser judgment to-wit: The District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States in and for the Ninth Circuit, and has done so upon the written application of the creditors now herein objecting, upon whose objections the order herein sought to be reviewed was made and after an order of this Honorable Referee had been duly made upon such written application of the said creditors, permitting and instructing the said Trustee herein to go to California and attack the said Heiser judgment in each of the said forums.

(h) That the objecting creditors herein and each of them, are bound by the result of the acts of the said Trustee P. M. Jackson who acted upon the order of the Honorable

Referee herein made upon the petition of such creditors for such order, such Trustee P. M. Jackson having already objected and having heretofore attested the sufficiency of said Heiser judgment in the said forums so designated by the said Honorable Referee herein in his order made granting the petition of such creditors; that the said Trustee P. M. Jackson has heretofore attacked the Heiser judgment in an independent equity proceeding and in a review by the said Trustee P. M. Jackson on appeal, pursuant to the order of the said Honorable Referee made granting the petition of each of said creditors therefor and the Circuit Court of Appeals of the United States in and for the Ninth Circuit having so held.

136 (i) That the objecting creditors are estopped by the said acts of the said Trustee P. M. Jackson under said circumstances, to-wit: estopped by judgment.

(j) That the objections by the objecting creditors herein constituted a collateral attack upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States for the Ninth Circuit, which judgment is res adjudicata of the facts and of the law. In support of such objections in respect to the law, petitioner offers and refers to 28 U. S. Code Amended 531, and the cases Judiciously interpreting that section.

(k) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is contrary to law.

(l) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is against the evidence.

(m) That the Honorable Geo. Clark, Referee, erred in over-ruling the objections of claimant M. E. Heiser to the introduction of any evidence in support of any and all of the objecting creditors' objections for the reasons designated herein and as set out in the transcript and on file in said proceeding.

137 The petitioning claimant M. E. Heiser hereby requests that the Referee prepare a certificate for

review and that there be forwarded with said certificate for review to said District Court, and accompanying it and filed by the Referee, all of the evidence, documentary and otherwise, offered in support of, and in objection to, said claim, and the record of all such proceedings including depositions introduced by any of the parties; that there be transmitted with the said Referee's certificate for review the original claim of M. E. Heiser and the supplement thereto, together with exemplified and certified copies of the judgment of the District Court of the United States for the Southern District of California, Central Division, in the case of Heiser, Plaintiff, vs. Leonard J. Woodruff, et al, Defendants, No. 7256-C, the opinion of the United States Circuit Court of Appeals for the Ninth Circuit, No. 9356, which affirms the judgment aforesaid on review, the supplement to the claim of M. E. Heiser as filed by the petitioner herein with said supporting documents, to-wit: the certified and exemplified copies of the judgment of the United States District Court, Southern District of California, Central Division, in the said case of M. E. Heiser vs. Leonard J. Woodruff, et al, No. 7256-C, and the certified and exemplified copy of the judgment of the United States Circuit Court of Appeals on review of the aforesaid judgment, No. 9356; that the court make a summary of the evidence introduced in support of the claim of M. E. Heiser, including the Reporter's Transcript of such testimony other than exhibits; that the original exhibits be filed with the Clerk of the United States District Court for the Eastern District of Oklahoma at the time of, and as a part of, the Referee's certificate on review; that accompanying such documents the Honorable Referee include the applications of the objecting creditors and of the Trustee herein for authority to institute legal action to vacate and set aside judgment of M. E. Heiser against the Bankrupt Leonard J. Woodruff, and for authority to employ counsel to represent said Bankrupt in said matter, and the application of the objecting creditors, other than M. E. Heiser, requesting that the Honorable Referee herein direct the Trustee to take said legal steps, and the order of the Honorable Referee herein authorizing and directing the Trustee to institute legal action before the court at Los Angeles, California, to vacate and

set aside the judgment of M. E. Heiser against the said bankrupt, such order being dated and filed on or about August 23, 1939, and the application of the Trustee herein and of the objecting creditors herein requesting that the Honorable Referee herein direct the Trustee to appeal to the United States Circuit Court of Appeals in and for the Ninth Circuit from the judgment in the case of M. E. Heiser vs. Leonard J. Woodruff, et al, No. 7256-C, and the judgment of said court in the independent action filed by said Trustee to vacate, set aside, and void the said judgment, and to employ counsel therefor and to incur expenses incident thereto, and the order of the Honorable Referee herein on file herein granting such applications and authorizing and directing the Trustee to proceed to institute such appeal to the United States Circuit Court of Appeal in and for the Ninth Circuit.

138 The undersigned M. E. Heiser hereby tenders to the Referee, and offers to pay in cash forthwith, such sums as may be necessary to prepare such documents, and to prepare the Referee's certificate for review, and to prepare the Reporter's Transcript and to transmit the same to the Clerk of the District Court for the Eastern District of Oklahoma. Said amount being unknown and undetermined at this time, the undersigned tenders and deposits for the Referee's use and for the payment of such fees as the Referee may be entitled, the sum of $30.00 as requested in the letter of the Referee dated October 1, 1943, and offers to pay such other sums as may be properly found to be payable to complete this record as proposed by the Referee in said letter.

Wherefore, petitioner prays that the order of the Referee herein disallowing the claim of M. E. Heiser be certified for review by the District Court of the United States for the Eastern District of Oklahoma within the time allowed by law.

MITCHELL S. MEYBERG,
LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
T. G. GIBSON.

By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

M. E. HEISER, Petitioner.
By M. S. MEYBERG.

Assignment of Errors by Petitioner on Review, M. E. Heiser. (On Review of the Order Disallowing the Claim of M. E. Heiser, a Judgment Creditor).

139 Comes now M. E. Heiser, petitioner on review, and files this, his assignment of errors on review of the order of the Referee hereinabove referred to, to-wit:

(a) That the Honorable Referee in Bankruptcy is without jurisdiction to retry the case on the merits, to-wit: The case out of which the judgment of the District Court of the United States for the Southern District of California, Central Division, had entered its judgment in the matter of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, et al., defendants, which judgment had been appealed by P. M. Jackson as Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt, the bankrupt herein, and by Leonard J. Woodruff, the bankrupt herein to the United States Circuit Court of Appeals for the Ninth Circuit, and which judgment of the said District Court of the United States had been therein by the said Circuit Court of Appeals of the United States, for the Ninth Circuit, affirmed.

(b) That creditors who object to the claim of M. E. Heiser were bound by the result of the acts of their Trustee P. M. Jackson who, pursuant to the request of all creditors other than M. E. Heiser and under order of the Honorable Geo. Clark, Referee in Bankruptcy, had heretofore tested the sufficiency of the judgment in the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, Defendant, as given in the District Court of the United States for the Southern District of California, Central Division, on appeal and by equity attack in the United States Circuit Court of Appeals for the Ninth Circuit and were bound by the result of such proceeding.

140 (c) That the objectors, and each of them, were bound, and the Referee was bound by the rule of law that it is not possible to make a collateral check on a final

judgment which was res adjudicata of the facts and of the law against the Bankrupt and the Trustee after said proceedings, and that the Referee in Bankruptcy and this Court could not legally attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter after that judgment had been unsuccessfully attacked first by a review taken therefrom by the Bankrupt and second, by a review taken by the Trustee in Bankruptcy herein, P. M. Jackson, as Trustee of the Bankrupt Estate of Leonard Woodruff, upon authority of the Honorable Referee herein and by his order granting the petition of said Trustee and all of the creditors of said Bankrupt Estate excepting M. E. Heiser, and after the institution and maintenance and determination of an independent equitable proceeding attacking said judgment, which, independent equity attack had been fully determined by the said Circuit Court of Appeals (111 Fed.(2) p. 310) was a final judgment prior to the trial of the objections now made to the claim of M. E. Heiser.

(d) That in disallowing the claim of M. E. Heiser, the Honorable Referee in Bankruptcy refused to apply the law, to-wit: That the judgment which was the basis of the claim of M. E. Heiser as filed herein, was a final judgment and adjudicated fully and finally the matters and things which were the subject matter of the case in which the judgment was rendered, and that it was beyond the legal power and authority of the Referee in Bankruptcy to reverse or review, modify, order or change the said judgment as rendered by the District Court of the United States for the Southern District of California, and as affirmed on review by the United States Circuit Court of Appeals for the Ninth Circuit (111 Fed.(2) p. 310).

(e) That the Referee in Bankruptcy in making the order disallowing the claim of M. E. Heiser erred in that he did not hold that the bankrupt Leonard J. Woodruff and his Trustee in Bankruptcy, P. M. Jackson, and each of them, were estopped by the judgment of the United States
141 Circuit Court of Appeals for the Ninth Circuit, in the matter of M. E. Heiser vs. Leonard J. Woodruff, Bankrupt, known in the said United States Circuit Court of Appeals for the Ninth Circuit as P. M. Jackson, as Trustee

in Bankruptcy of the Estate of Leonard J. Woodruff, and Leonard J. Woodruff, Appellants, vs. M. E. Heiser, Appellee and Respondent (111 Fed.(2) p. 310), in that the said Leonard J. Woodruff and P. M. Jackson as Trustee in Bankruptcy herein filed and participated in said appeal and were bound by the result of said litigation, not only in the United States Circuit Court of Appeals for the Ninth Circuit *ubt* also by the final judgment of the United States District Court for the Southern District of California in the said case of M. E. Heiser, Plaintiff vs. Leonard J. Woodruff, et al., Defendants.

(f) That the said Honorable Referee in Bankruptcy erred in refusing to recognize and apply the rule of law that "full faith and credit shall be given by every state to the laws of every other state," and the application of such law as heretofore decreed to apply in the District Court of the United States. That the said Honorable Referee in Bankruptcy erred in not applying the rule of full faith and credit to the final judgment of M. E. Heiser, plaintiff, vs. Leonard J. Woodruff, defendant, which judgment as affirmed, and appealed, by the United States Circuit Court of Appeals for the Ninth Circuit was the basis of the claim as filed herein as the claim of M. E. Heiser, and was the basis of the supplement to the claim of M. E. Heiser filed herein.

(g) That the alleged creditors who filed the objections herein, upon which the order is sought by this petition to be reviewed, are not parties, nor any of them parties, who may legally and properly object to the claim of M. E. Heiser, petitioner herein, there being in this case a Trustee duly elected and qualified who has heretofore made the same objections unsuccessfully after authorization and order of the Honorable Referee herein that he do so, such order

142 being based upon petition of such creditors for such order, the rule of law being that only when a Trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim, under such circumstances can an order be made permitting a creditor to act independently, but only when the Trustee himself has not acted. In this case the Trustee selected the forum to attack the said Heiser judgment to-wit: the District Court of the United States in and for the Southern District of Califor-

nia, Central Division, and the Circuit Court of Appeals of the United States in and for the Ninth Circuit, and has done so upon the written application of the creditors now herein objecting, upon whose objections the order herein sought to be reviewed was made and after an order of this Honorable Referee had been duly made upon such written application of the said creditors, permitting and instructing the said Trustee herein to go to California and attack the said Heiser judgment in each of the said forums.

(h) That the objecting creditors herein and each of them, are bound by the result of the acts of the said Trustee P. M. Jackson who acted upon the order of the Honorable Referee herein made upon the petition of such creditors for such order, such Trustee P. M. Jackson having already objected and having heretofore attested the sufficiency of said Heiser judgment in the said forums so designated by the said Honorable Referee herein in his order made granting the petition of such creditors; that the said Trustee P. M. Jackson has heretofore attacked the Heiser judgment in an independent equity proceeding and in a review by the said Trustee P. M. Jackson on appeal, pursuant to the order of the said Honorable Referee made granting the petition of each of said creditors therefor and the Circuit Court of Appeals of the United States in and for the Ninth Circuit having so held.

143 (i) That the objecting creditors are estopped by the said acts of the said Trustee P. M. Jackson under said circumstances, to-wit: estopped by judgment.

(j) That the objections by the objecting creditors herein constituted a collateral attack upon a final judgment of the District Court of the United States in and for the Southern District of California, Central Division, and the Circuit Court of Appeals of the United States for the Ninth Circuit, which judgment is res adjudicata of the facts and of the law. In support of such objections in respect to the law, petitioner offers and refers to 28 U. S. Code Amended 531, and the cases judiciously interpreting that section.

(k) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is contrary to law.

(l) That the said order of the Honorable Geo. Clark disallowing the claim of M. E. Heiser is against the evidence.

(m) That the Referee erred in overruling the objections of the claimant M. E. Heiser, to the introduction of any evidence in support of the objecting creditors' objections and erred in permitting evidence which constituted the retrial of the case of M. E. Heiser, Plaintiff, vs. Leonard J. Woodruff, et. al., as heretofore tried in the United States District Court for the Southern District of California and as affirmed on appeal by the United States Circuit Court of Appeals for the Tenth Circuit and the fraud issues of which had attempted to be raised in an independent equity proceeding instituted by Trustee P. M. Jackson at the special instance and request of the objecting creditors herein, to-wit: all creditors with claims on file other than M. E. Heiser, which objection was in words, letters, figures and form as follows:

"By Mr. Turnbull:

The claimant, M. E. Heiser, objects to the introduction of any evidence in support of any and all of the objecting creditors' objections:

144 First, that the said alleged creditors are not parties, nor are any of them parties who may legally and properly object to the claim of the creditor, Heiser, there being in this case a trustee duly elected and qualified who has heretofore made the same objections unsuccessfully. The rule of law being that only when a trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim can an order be made permitting a creditor to act independently, and then only when the trustee himself has not acted. In this case the trustee has selected the forum to attack the Heiser judgment and has done so upon the written application of the creditors now here objecting after an order of this Court duly made permitting and instructing the trustee to go to California and attack the Heiser judgment.

Second, That the creditors now objecting are bound by the result of the acts of the trustee, Jackson, who has already objected and has heretofore tested the sufficiency of the Heiser judgment; that said trustee, Jackson, has attacked

the Heiser judgment in an independent equity proceeding, and the Ninth Circuit Court has so held.

Third, That the objecting creditors here are estopped by the acts of their trustee, Jackson, to-wit: an estoppel by judgment.

Fourth, That the objections by the objecting creditors here are a collateral attack upon a final judgment, which is res adjudicata of the facts and of the law. In support of our objection in respect to the law, we offer and refer to 28 U. U. Code, amended, 531, and the cases judiciously interpreting that section.

Fifth, That full faith and credit is under the law to be given by this Court to the final judgments and decrees of other District Courts of the United States, to-wit: Courts of equal jurisdiction and of equal dignity. That the claimant M. E. Heiser objects to the introduction of any evidence in support of any objection made by the bankrupt, or the trustee or any other person on the ground that the record now shows that the matters involved in the Heiser
145 claim, and the objections thereto are res adjudicata; that the objectors are estopped by the judgment, First, by the judgment in favor of Heiser and against the bankrupt, Woodruff, and Second by the judgment as unsuccessfully attacked and so held by the United States Circuit Court of Appeals in the Ninth Circuit in the matter entitled, Jackson, Trustee vs. Heiser, a certified copy of which is now in evidence; also on the ground that full faith and credit must be given by this Court to the final judgment of the United States District Court for the Southern District of California, and the judgments and decrees of the Ninth Circuit in this matter; further on the ground that there is no authority in the bankrupt to object after his trustee has objected unsuccessfully; further, on the ground that the present offer of proof by the objectors is a collateral attack upon a final judgment, as has been decreed by the Tenth Circuit stated in the opinion of Judge Sam Bratton, as heretofore referred to and cited. That this Court cannot attack the wisdom of a final judgment of a Court having jurisdiction of the person and of the subject matter, which is res adjudicata, and which is plead in this case."

That no written findings of fact or written conclusions of law have been made or filed relating to or upon which the order complained of is based.

LEONARD J. MEYBERG,
MITCHELL S. MEYBERG,
T. G. GIBSON,
RUPERT B. TURNBULL,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Filed Oct. 14, 1943. Geo. F. Clark, Referee.

Petition for Review of the Order of the Referee Allowing the Claim of Willie May Woodruff for $812,176.15, and Assignments of Error.

146 Comes now M. E. Heiser, a creditor herein, and files this, his petition for the review of the order of the Honorable Geo. Clark, Referee in Bankruptcy, allowing the claim of Willie May Woodruff for $812,176.15, and all thereof. Your petitioner M. E. Heiser has heretofore filed in this proceeding objections to the allowance of the claim of Willie May Woodruff and after trial thereon the Referee has, in the course of the proceedings, now made his Order overruling said objections and allowing said claim of Willie May Woodruff in its entirety, with interest for ten years at 7% per annum.

The undersigned, M. E. Heiser, feeling aggrieved at said order, petitions for review of said Referee's order by the District Court of the United States for the Eastern District of Oklahoma and by a judge thereof. Said order sought to be reviewed is that order of the Honorable Geo. Clark, Referee in Bankruptcy, being the only order, allowing the claim of Willie May Woodruff, filed herein on October 4, 1943, and which order is in words, figures, letters and form as follows, to-wit:

[The order appears at page 127.]

147 Your petitioner hereby assigns and designates as error committed by the said Honorable Referee in Bankruptcy and as grounds for seeking said review of said

order, the following errors, which he alleges were committed by the said Referee in Bankruptcy:

(a) The order complained of above is contrary to the evidence in that no trust was ever proved to exist as between the bankrupt Leonard J. Woodruff and the claimant Willie May Woodruff, the wife of said bankrupt, and no trust in fact existed.

(b) That there was no indebtedness existing at the date of the bankruptcy as between Leonard J. Woodruff, the bankrupt, and his wife, the claimant Willie May Woodruff.

(c) That said Willie May Woodruff waived any right in and to any property, real and personal, which she might have claimed to be her own as distinguished between that of her husband, the bankrupt Leonard J. Woodruff, when funds were used to pay the claim of the United States Government Internal Revenue Department to-wit: the delinquent income taxes of Leonard J. Woodruff.

(d) That the said order is contrary to law in that the said claim of Willie May Woodruff was at the date of bankruptcy herein, and has been at all times since, barred by the Statutes of Limitation of the State of Oklahoma and of the State of California, and each of them, and that the Referee in Bankruptcy erred in allowing said claim in the face of the Bar of the Statutes of Limitation.

(e) That the Referee erred in that he ignored the affirmative provision of the National Bankruptcy Act that no claim be allowed which is barred by the Statutes of Limitation or is barred by the Statutes of the State limiting the time within which actions may be commenced to enforce the collection of debts, and when he made an order allowing said claim when said claim was shown to have been outlawed under the Statutes of the State of California, the Statutes of Limitation of the State of Oklahoma, and each of them.

148 (f) That the said order allowing the claim is contrary to law.

(g) That the said order allowing the claim is contrary to the evidence.

Petitioner requests that the Referee prepare a certificate

tor review and that there be forwarded with said certificate for review to said District Court and accompanying it, the evidence offered in support of, and in objection to, the claim of Willie May Woodruff. That the Court forward with this certificate the claim of Willie May Woodruff, the objections of M. E. Heiser thereto, and the documentary evidence offered; that evidence be sent in the original form to the Clerk of the District Court. Petitioner requests the preparation of the Reporter's Transcript showing the oral evidence offered with reference to the claim and in support of the claim of M. E. Heiser.

The undersigned M. E. Heiser hereby tenders to the Referee and offers to pay in cash forthwith such sums as may be necessary to prepare such documents, to prepare the Referee's certificate for review, to prepare the reporter's transcript and transmit the same to the Clerk of the District Court for the Eastern District of Oklahoma. Said amount being unknown and undetermined at this time, the undersigned tenders and deposits for the Referee's use and for the payment of such fees as the Referee may be entitled, the sum of $20.00, in addition to the amount of $10.00 heretofore deposited, all as requested in letter of the Referee dated October 1, 1943, and offers to pay such other sums as may be properly found to be payable to complete this record, as proposed by the Referee in said letter.

Wherefore, petitioner prays that the order of the Referee allowing the claim of Willie May Woodruff for $812.176.15 be certified for review by the District Court of the United States for the Eastern District of Oklahoma within the time allowed by law

M. E. HEISER, Petitioner.
By MITCHEL S. MEYBERG.

MITCHEL S. MEYBERG,
LEONARD J. MEYBERG,
RUPERT B. TURNBULL,
T. G. GIBSON,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Filed Oct. 14, 1943. Geo. F. Clark, Referee.

Assignment of Errors Made on Behalf of Petitioner M. E. Heiser, a Creditor, on Petition for Review From the Order of The Hon. Referee Clark Allowing the Claim of Willie May Woodruff for $812,176.15.

149 Comes now M. E. Heiser, creditor herein, and files this, his assignment of errors, in connection with his petition for review from the order of the Referee allowing the claim of Willie May Woodruff for $812,176.15, and assigns as error the following:

(a) The order complained of above is contrary to the evidence in that no trust was ever proved to exist as between the bankrupt Leonard J. Woodruff and the claimant Willie May Woodruff, the wife of said bankrupt, and no trust in fact existed.

(b) That there was no indebtedness existing at the date of the bankruptcy as between Leonard J. Woodruff, the bankrupt, and his wife, the claimant Willie May Woodruff.

(c) That said Willie May Woodruff waived any right in and to any property, real and personal, which she might have claimed to be her own as distinguished between that of her husband, the bankrupt Leonard J. Woodruff, when funds were used to pay the claim of the United States Government Internal Revenue Department, to-wit: the delinquent income taxes of Leonard J. Woodruff.

(d) That the said order is contrary to law in that the said claim of Willie May Woodruff was at the date of bankruptcy herein, and has been at all times since, barred by the Statutes of Limitation of the State of Oklahoma, and of the State of California, and each of them, and that the Referee in Bankruptcy erred in allowing said claim in the face of the Bar of the Statutes of Limitation.

(e) That the Referee erred in that he ignored the affirmative provision of the National Bankruptcy Act that no claim be allowed which is barred by the Statutes of Limitation or is barred by the Statutes of the State limiting the time within which actions may be commenced to enforce the collection of debts, and when he made an order al-
150 lowing said claim when said claim was shown to have been outlawed under the Statutes of the State of Cali-

fornia, the Statutes of Limitation of the State of Oklahoma, and each of them.

(f) That the said order allowing the claim is contrary to law in that no written findings of fact or written conclusions of law have been made or filed relating to or upon which the order complained of is based.

(g) That the said order allowing the claim is contrary to the evidence.

LEONARD J. MEYBERG,
MITCHELL S. MEYBERG,
T. G. GIBSON,
RUPERT B. TURNBULL,
By MITCHELL S. MEYBERG,
Attorneys for Petitioner.

Referee's Certificate On Review.

To the Hon. Eugene Rice, District Judge:

151 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order was made and entered allowing the unsecured claim of Wille May Woodruff for the sum of $812,176.15, being principal sum of $477,750.68 with interest thereon at 7% per annum from 1929 to 1939 amounting to $334,425.47, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser, objecting creditor.

The questions presented on this review are:

1. Was a trust created in favor of claimant, Wille May Woodruff, and, if such trust was created, was the same in effect at the time of bankruptcy?

2. Is the claim barred by the statutes of limitation?

The claim is based on an alleged trust in favor of the claimant, Wille May Woodruff, against the debtor, Leonard J. Woodruff, by reason of the claimant turning over her money to the debtor for investment for her benefit. The

claim was filed for $442,728.58 or such sums as might be found due. Objections to the claim were filed by M. E. Heiser.

The evidence consists of testimony of the claimant and the debtor memoranda made by debtor, letters, statements of brokers, paid checks, etc.

In 1919 debtor gave certain lands located in Carter County, Oklahoma, to the claimant and thereafter an oil and gas lease on said land was sold to the Carter Oil Company. The claimant, received from the sale of the oil and gas lease $45,000.00 and from oil and gas royalties the sum of $760,750.68 a total of $805,750.68 from 1919 to 1930.

Claimant testified that in 1920, when she was about 20 years old, she and her husband, the debtor, had a conversation wherein she agreed to let him handle all of her money that was coming in to buy bonds and good gilt edge securities for her and that he was not to speculate with any of her money. That the debtor, her husband, told her he would take her money if she wanted him to and invest it for her in good securities and bonds and handle it for her.

152 Debtor testified that at the time his wife gave him the first money for investment in 1920 "she said she did not know how to transact business and if I would invest the money for her that she thought that would be the best thing under the circumstances to be done."

Claimant turned over to debtor for investment practically all of the money which she received from sale of oil and gas lease and from oil and gas royalties.

The bonds and securities purchased by the debtor with the claimant's money for her benefit were retained by the debtor in his possession and none were turned over to the claimant.

The total amount realized by claimant from her property to 1930 was the sum of $805,750.68.

There was received by the claimant in cash or property the following amounts:

$ 97,000.00	residence in Los Angeles purchased by claimant, page 200 of transcript.
$ 50,000.00	house furnishings for above residence, page 200 of transcript.
$ 95,000.00	real estate in Los Angeles turned over to claimant by debtor, page 99 of transcript.
$ 50,000.00	cash turned over to claimant by debtor, page 150 of transcript.
$ 36,000.00	household expenses, $300.00 per month, ten years, page 201 of transcript.
$328,000.00	

The $328,000.00 deducted from the $805,750.68, leaves $477,750.68, which amount plus interest thereon at 7% per annum from 1929 to 1939 (10 years) amounting to $334,425.47, totals $812,176.15, the amount for which the claim was allowed.

Claimant testified that debtor in 1935 paid her $2,000.00 in cash and in 1936 paid her taxes amounting to $820.75. These items are not included above as same are apparently included in the $50,000.00 cash above set forth, which debtor stated was maximum amount cash turned over by him to claimant.

153 From 1920 to latter part of 1929 the debtor purchased with claimant's funds only bonds and non speculative stocks. In latter part of 1929 debtor began selling these bonds and stocks and using the proceeds to speculate on margin in the New York Stock Market.

By the early part of 1931 practically all of the non-speculative bonds and stocks which had been sold by debtor and the proceeds used to speculate in New York Stock Market. In December, 1931 the Government attached his account at broker's and the debtor's account was closed out. At that time he had left of claimant's non-speculative funds and stocks not to exceed $18,000.00, none of which was received by claimant.

I hand up herewith for information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs were filed with Referee prior to order allowing claim:

2. Memorandum Brief on behalf of M. E. Heiser, objecting creditor.

3. Reply to the Memorandum Brief on behalf of the objector, Heiser. Submitted by W. W. Potter.

4. Reply Brief to Memorandum filed by objector, M. E. Heiser. Submitted by Mark S. Feiler.

5. Petition for Review.

6. Copy of proof of debt of Wille May Woodruff.

7. Objections to claim of Wille May Woodruff.

8. Copy of Order Allowing Unsecured Claim of Wille May Woodruff.

9. Transcript of hearing on objections to claim of Wille May Woodruff.

10. Exhibits introduced at hearing on objections to said claim, except No. 6 original claim, copy of which is attached hereto, being Number 6 above.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Referee's Certificate On Review.

To the Hon. Eugene Rice, District Judge:

154 I, Geo. F. Clark, Referee in Bankruptcy, do hereby certify that in the course of this proceeding an order

was made disallowing the unsecured claim of M. E. Heiser, a copy of which order is hereto attached.

Petition for Review of said order was filed by M. E. Heiser.

A claim was filed by said M. E. Heiser against the bankrupt estate in the sum of $278,631.71, the consideration as set forth in the proof of debtor being: "Liability for obtaining property of affiant consisting of rough sapphires, opals and zircons of the value of $184,000.00, by false pretenses and false representations through willful, wrongful and fraudulent conversion thereof on May 13, 1929, together with interest thereon, at the rate of 7% per annum, amounting to $113,036.71 and costs of $1,595.00 fixed by and reduced to judgment in the District Court of the United States in and for the Southern District of California, Central Division, made, entered and filed in said County on March 20, 1939, in favor of M. E. Heiser, deponent herein, as plaintiff, and against Leonard Woodruff, bankrupt herein, as defendant, certified copy of which judgment of said United States Court is marked Exhibit 'A', is hereto annexed and referred to as a part hereof." A supplement to proof of claim of M. E. Heiser was thereafter filed.

Objections to claim of M. E. Heiser were filed by Leonard J. Woodruff, debtor, a petition for arrangement made under Chapter 11 having been filed by said Woodruff and an order made staying administration. Objections to the Heiser claim were also filed by Willie May Woodruff, Ida Belle Woodruff, Howard W. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff, Jr., creditors. Answers to the objections were filed by M. E. Heiser. Amendments to their objections to Heiser claim were filed by Ida Belle Woodruff and Willie May Woodruff.

The questions presented on this review are:

1. Does the default judgment of March 20, 1939, against Leonard Woodruff in favor of M. E. Heiser, the judgment of September 26, 1939, denying the Motions of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff, Debtor, and the decision of the Circuit Court of Appeals affirming the judgment of September 26, 1939, prevent the Bankruptcy

Court from considering the underlying claim of M. E. Heiser and allowing or disallowing in whole or in part the claim of said M. E. Heiser as filed in the bankruptcy court?

155 2. Is the evidence produced by the objectors in opposition to the claim of M. E. Heiser sufficient to defeat such claim?

Res Adjudicata.

The original suit of Heiser vs. Woodruff et al was filed in the California Court on July 11, 1935. Woodruff was served with summons on January 31, 1939 and on the 23rd day of February, 1939, the default of Woodruff was entered by the Clerk of said Court.

On March 20, 1939, the judgment which is the basis of the Heiser claim was entered and on March 29, 1939, a Motion was filed by Woodruff to set aside the default judgment, and on June 8, 1939, an order was made denying Woodruff's Motion but providing that hearing be held to determine value of the property (gems); on June 29, 1939, the value of the property was fixed at the amount fixed in the judgment.

On July 5, 1939, Woodruff filed voluntary petition and was adjudged bankrupt the same day.

On August 23, 1939, upon application of P. M. Jackson, Trustee of the estate of Leonard J. Woodruff, bankrupt, an order was made by the Referee in Bankruptcy authorizing and directing said Trustee to take such action as might be necessary to have set aside the default judgment.

On the 28th day of September, 1939, the Motion of the Trustee was denied as was also the Motion of Leonard J. Woodruff. An appeal from the order of June 29, 1939, and from the order of September 26, 1939, was taken and Circuit Court of Appeals of the Ninth Circuit dismissed the appeal as to order of September 29, 1939 and affirmed the order of September 26, 1939. The decision of the Circuit Court of Appeals is reported in 111 Fed. 2d. 310.

Objectors' Exhibit DD, 7-27-42, is a certified transcript of Record, upon appeal from the District Court of the United States for the Southern District of California, Central Di-

vision, in No. 9356 United States Circuit Court of Appeals for the Ninth Circuit, P. M. Jackson, Trustee in Bankruptcy of the estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, appellants, vs. M. E. Heiser, appellee.

156 This Transcript of Record (Ex. DD) apparently is a complete record of the proceeding in which Heiser obtained the default judgment and also the proceeding in connection with the Motion of P. M. Jackson, Trustee in Bankruptcy, and Leonard Woodruff.

Objectors' Ex. CC, 7-27-42, is a Reporter's Transcript of Argument on Motion to Vacate Judgment and set aside Default on September 26, 1939. This is the Motion to set aside default judgment filed by P. M. Jackson, Trustee, and Leonard Woodruff.

Objectors' Ex. RR is a transcript of hearing to determine value of the gems after the entry of the default judgment in favor of Hesier, against Woodruff.

Underlying Claim.

Objectors produced a large amount of evidence in support of their objections. Depositions of numerous witnesses were taken. The claimant offered no evidence on this point but relied on his judgment.

M. E. Heiser came to San Francisco from Australia the end of 1914 or the early part of 1915 on account of the Panama Pacific Exposition at San Francisco.

According to the testimony of M. E. Heiser the uncut gems ($164,000.00) of uncut sapphires, etc.) were brought to San Francisco in 1915 or latter part of 1914 and amounted to several tons. Heiser testified at the hearing to re-determine values in Heiser vs. Woodruff in the District Court of California: "I represented the Queensland Government at the Panama Exposition as their expert cutter for demonstration in 1915 in San Francisco cutting to demonstrate how the gems were cut and how they were mined." In his deposition in this proceeding he stated that he was not the official representative of any Government.

The depositions of three Australian officials were taken by objectors. As shown by these depositions Heiser was not

an official representative of the Australian Government nor
of any State Government of Australia. That Heiser
157 obtained permission to operate a small lapidist's
bench in the Australian Pavilion. That "one of the conditions of Mr. Heiser's tenancy at the Australian Pavilion was that no articles were to be sold by him therein. As Mr. Heiser persisted in selling at his bench gemstones (chiefly rough potch opals), the *Austrlian* Commissioners withdrew his permit to exhibit within the Australian Pavilion."

Heiser had his space in the Australian Pavilion about a week.

According to Heiser's testimony when he discontinued operations at the Exposition the cheaper material was stored in warehouse and other places and the better materials in the Wells Fargo Bank in San Francisco.

All this material according to Heiser's testimony (being the $164,000.00 worth of uncut sapphires) remained in San Francisco in warehouse or Wells Fargo Bank until 1928 when it was shipped to Los Angeles. In Los Angeles it was stored in U. S. National Bank, Los Angeles, and none of the material was removed by anyone until it was removed under attachment in case of Woodruff vs. Golden State Gem Company.

Heiser went to Los Angeles in July, 1928, and shortly thereafter met Woodruff through one Calvin Smith who was connected with the Golden State Gem Company of California, a California Corporation. The Golden State Gem Company of Nevada, a Nevada, Corporation, was thereafter organized. Woodruff appears to have owned no stock in either of these corporations. Woodruff did loan $10,000.00 to Smith in addition to amount then owing to him by Smith.

Heiser in August, 1928, left Los Angeles for Europe and did not return to Los Angeles until September or October, 1930.

In 1929 Woodruff filed suit against Golden State Gem Company of California and Golden State Gem Company of Nevada and the material in the U. S. National Bank was attached. The material was contained in thirty six (36) sacks.

At the sale Woodruff bought thirty five (35) sacks for $1000.00. One sack was purchased by Louis Oreck for his son. Oreck testified that he selected what he *though* was the best sack of material but that it proved later to be of no value.

While Heiser was in Europe the Golden State Gem Company of California was adjudged bankrupt. A claim was filed in the bankruptcy court for $30,250.00 in behalf of Heiser by his brother in law, which was disallowed and upon appeal the appeal dismissed.

158 I hand up herewith for the information of the Judge the following papers:

1. Brief of M. E. Heiser on Petition for Review.

The following briefs filed with Referee prior to order disallowing Heiser claim;

2. Brief on behalf of objectors to the claim of M. E. Heiser.

3. Reply brief in behalf of the claim of M. E. Heiser.

4. Petition for review.

5. Copy of order disallowing M. E. Heiser claim.

6. Copy of proof of debt of M. E. Heiser and Supplement thereto.

7. Objections of debtor, Leonard Woodruff, to claim of M. E. Heiser.

8. Answer to objections of Leonard J. Woodruff, by M. E. Heiser.

9. Objections of Wille May Woodruff to claim of M. E. Heiser, and Amendment thereto.

10. Answer of M. E. Heiser to objections of Willie May Woodruff.

11. Objections of Ida Belle Woodruff to claim of M. E. Heiser and Amendment thereto.

12. Answer by M. E. Heiser to objections of Ida Belle Woodruff.

13. Objections of Howard Woodruff to claim of M. E. Heiser.

14. Answer of M. E. Heiser to objections of Howard Woodruff.

15. Objections of Margueritte Woodruff to claim of M. E. Heiser.

16. Answer of M. E. Heiser to objections of Margueritte Woodruff.

17. Objections of Leonard Woodruff, Jr., to claim of M. E. Heiser.

18. Answer of M. E. Heiser to objections of Leonard Woodruff, Jr.

19. Transcript of Hearing before Referee on objections to Heiser claim.

The following depositions taken in behalf of objectors:

20. Deposition of M. E. Heiser.

21. Deposition of D. K. Stern.

22. Deposition of E. A. Lobree.

159 23. Deposition of Jefferson J. Graves.

24. Deposition of C. N. Olson, H. A. Dewing, C. W. McClain, J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck, and Claire E. Cone.

The following three (3) depositions were taken in Australia:

25. Deposition of Leo Joseph Jones.

26. Deposition of Adolphus Arnold Staines.

27. Deposition of David Barnett Elward.

28. Exhibits.

Dated at McAlester, said District, this the 28th day of January, 1944.

Respectfully submitted,

GEO. F. CLARK,
Referee in Bankruptcy.

Filed Jan. 29, 1944. John H. Pugh, Clerk, U. S. District Court.

[Memorandum Opinion.]

160 On July 5, 1939, Leonard J. Woodruff (hereinafter referred to as the bankrupt), was adjudged to be a bankrupt by this court upon his voluntary petition filed herein. This was but a few days after the United States District Court for the Southern District of California, Central Division, had refused after a hearing to modify a judgment which had been entered against the bankrupt on March 20, 1939. Prior thereto, the United States District Court for California had refused to set aside an entry of default judgment against the bankrupt. It is my conclusion that the action of the California Court in refusing to set aside the default judgment and to modify the judgment after a hearing precipitated the filing of the bankruptcy in this court. The chief controversy in this proceeding has centered upon the contest between Heiser and the bankrupt and has had to do with the judgment mentioned above.

In the bankruptcy proceedings three groups of claims have been filed: (1) Claim of Heiser, based upon his judgment, (2) Claim of Willie May Woodruff, wife of the bankrupt, and (3) The claims of Howard L. Woodruff, Marguerite B. Woodruff and Leonard Woodruff Jr., children of the bankrupt. The claim of Heiser was denied by the referee. The claim of Willie May Woodruff, the wife, was allowed by the referee in the total amount of $842,176.15, being $477,750.68 principal and $334,425.47 interest to the date of the order. The claim of Howard L. Woodruff was allowed for

the total sum of $75,177.12. The claim of Margueritte
161 B. Woodruff was allowed in the total sum of $83,-
097.33. The claim of Leonard Woodruff Jr. was allowed in the total sum of $53,097.33. The action of the referee in disallowing Heiser's claim and in allowing the claim of the wife and the claims of the children are now here on bill of review brought by Heiser.

The bankrupt, his wife and three children, objected to Heiser's claim. Heiser objected to the claim of the wife and the claim of each of the children except that Heiser admitted the claim of the wife should be allowed to the extent of $18,000.00, and that the claim of Howard L. Woodruff should be allowed in the sum of $2,048.75.

The three groups of claims will be discussed separately.

Claim of Heiser.

P. M. Jackson, an attorney of Ardmore, Oklahoma, was appointed and qualified as trustee in bankruptcy of the bankrupt's estate. Early in these proceedings the trustee joined by the bankrupt and the other two groups of creditors applied to this court for authority to begin proceedings in the United States District Court for the Southern District of California to vacate and set aside the judgment rendered therein. The trustee was authorized by this court to employ competent counsel in California to represent him, to take all necessary and proper steps to vacate the Heiser judgment. This the trustee did. The bankrupt joined in the action begun by the trustee. The result of their efforts is disclosed in the decision of the Circuit Court of Appeals of the Ninth Circuit, Jackson v. Heiser, 111 Fed. 2nd, 310. The history of this judgment is well disclosed in the opinion of the Circuit Court, supra. It is not necessary herein to recount the facts set forth therein.

The referee in his certificate of review states that two questions are presented: (1) Does the judgment prevent the bankruptcy court from considering the underlying claim of Heiser and allowing or disallowing it in
162 whole or in part? (2) Is the evidence of objectors sufficient to defeat the claim? The referee answered the first question in the negative, the second in the affirmative, and disallowed the claim. In my opinion the referee

erred in answering the first question as he did, and it was not necessary to consider the second.

The Heiser judgment was and is a final judgment entered by a United States District Court, a member of the same judicial body of which this court is a member. Before reaching this court for decision in bankruptcy, it had been attacked by both the bankrupt and the trustee in bankruptcy who was acting for the benefit of the other creditors. The judgment had the approval not only of the trial court but of the Circuit Court. It is res judicata as to all matters actually litigated or which might have been litigated therein. Moffett v. Robbins, 81 Fed. 2nd, 431; In Re. Cherokee Public Service Co., 94 Fed. 2nd, 536.

Section 63 a (1) of the Bankruptcy Act (11 U.S.C.A. Sec. 103 (a) (1), is applicable and provides debts of a bankrupt are provable and allowable which are founded upon

"• • • a fixed liability as evidenced by a judgment • • • absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date • • •."

For a discussion on the conclusiveness of judgments in a bankruptcy, see Gilbert's Collier on Bankruptcy, Fourth Edition, Sec. 1247, page 968; also, Collier on Bankruptcy, 14th Edition, Vol. 3, page 1817; Murphy v. McLoughlin, 247 Fed. 385; Beneficial Loan Co. v. Noble, 129 Fed. 2nd, 425.

In Pepper v. Litton, 308 U.S. 295, the Supreme Court held that the attack of a trustee in the state court upon the judgment involved therein was not res judicata. In the opinion the court said:

"And the bankruptcy trustee may collaterally attack a judgment offered as a claim against the estate for the purpose of showing that it was obtained by collusion of the parties or is founded upon no real debt."

and in a foot-note the court said with respect to the above statement:

163 "This is, of course, in absence of a plea of res judicata."

In his application to this court by the trustee (in which application the objectors joined) to attack the Heiser judgment, it was stated that the judgment was based upon an erroneous, unjust and void judgment and was without merit. The order of this court to the trustee was full and complete authorizing him to do any and all things necessary and proper to avoid the judgment and thus defeat any claim based thereon. The purpose in authorizing the trustee to begin such proceedings was to defeat the judgment and thus avoid a claim based thereon in the bankruptcy proceedings. Had the trustee succeeded in his action, Heiser's claim, based upon the judgment, would have been defeated; and had Heiser's judgment been defeated, that would have been an adjudication against him as to all his rights against the bankrupt. I think it follows that an adverse decision on the action begun by the trustee and the bankrupt is res judicata in favor of Heiser. See Beneficial Loan Co. v. Noble, 129 Fed. 2nd, 425. For the effect to be given by this court to the judgment of another United States District Court, see Caterpillar Tractor Co. v. International Harvester Co., 120 Fed. 2nd, 82; Baldwin v. Iowa State Traveling Mens Association, 283 U. S. 522.

The action of the referee in disallowing Heiser's claim is error. The petition for review is allowed, and the referee's decision is reversed.

The Wife's Claim.

164 Willie May Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis

on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and securities with the exception of $18,000.00, was required to relieve the bankrupt of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more.

The Children's Claims.

165 The claims of the children are based upon alleged trusts created approximately twenty years before bankruptcy. The claimants present their claim upon the theory of a trust. The objector, Heiser, discusses their claims upon the theory of gifts inter vivos. The referee, after a hearing, determined that under the facts there was created a trust by the bankrupt in favor of each of the children in which trust the bankrupt was the trustee. These separate trusts were created by the purchase of certain stocks for one or the other of the children. The evidence discloses the stocks that were purchased and the amount thereof, and conclusively shows that these stocks were converted by the bankrupt many years ago.

The decision of the referee finding that there was a trust is sustained. However, the amount of the claim as to each of the children should be reduced in the amount of $9,925.83 plus $11,132.50, or a total of $21,058.33. The reason for this reduction is as follows: The evidence in support of the creation of a trust was the evidence of the bankrupt himself.

self, sustained by certain corroborating facts. The evidence of the bankrupt shows that the $9,925.83 item, plus the $11,132.50 mentioned above, was an investment in Imperial Irrigation bonds; that a short time after purchasing the Imperial Irrigation bonds he concluded that they were not a good investment and traded them for the Salt River Valley Water Users Association bonds; that the latter bonds proved to be more valuable; that the bankrupt subsequently converted and appropriated the Salt River Valley Water Users Association bonds. The amount of the claim as approved by the referee includes the value of both bonds plus the interest upon the value of the bonds. The bankrupt did not make two investments for his children. He merely changed the form of an investment. There were not two additions to the corpus of the trust estate—there was only one;
166 and the bankrupt's estate is chargeable only with the value of the Salt River Valley Water Users Association bonds. Included in the claim of each child, and allowed by the referee, is the item of $9,925.83, the value of the Imperial Irrigation bonds, plus $11,132.50 accumulated interest. This amount should be deducted from the claim of each child; and as so modified the decision of the referee as to the claim of each of the children is approved.

An order conforming to the views herein is this day entered.

This the 23rd day of June, 1944.

EUGENE RICE,
United States District Judge.

Filed June 23, 1944. John H. Pugh, Clerk, U. S. District Court, by R. Kizzire, Deputy Clerk.

[Judgment.]

167 Now on this 24th day of June, 1944, this case comes before this court for consideration on three separate certificates on review filed by the referee in bankruptcy, and based on petitions for review filed by M. E. Heiser, seeking review of an order of the referee disallowing the claim of Heiser in the amount of $278,631.71, an order allowing the claim of Howard L. Woodruff in the amount of $75,177.12, the claim of Margueritte B. Woodruff in the

amount of $83,097.33, and the claim of Leonard Woodruff Jr., in the amount of $53,097.33, and an order allowing the claim of Willie May Woodruff in the sum of $812,176.15.

On consideration of the briefs and oral arguments of the parties, the court being fully advised in the premises, is of the opinion and finds that the referee erred in denying the claim of M. E. Heiser, and that such claim should be allowed; that the referee erred in allowing in full claims of Howard L. Woodruff, Margueritte B. Woodruff and Leonard Woodruff Jr., and that each of such claims should be reduced in the amount of $21,058.33, and allowed as so reduced; and that the referee erred in allowing in full the claim of Willie May Woodruff, and that such claim should be denied except as to the sum of $18,000.00, in which amount she admittedly has a valid claim, and that such claim should be allowed in the amount of $18,000.00.

168 It is, therefore, Ordered, Considered, Adjudged and Decreed that the petition for review of the Heiser claim is sustained; that the referee's order disallowing the said claim is set aside; and that the claim of M. E. Heiser in the amount of $278,631.71 is allowed.

It is further Ordered and Decreed that the petition for review of the referee's order allowing the claims of Howard L. Woodruff, Margueritte B. Woodruff, and Leonard Woodruff Jr., is sustained; that the referee's order allowing such claims is amended as to the amount of the claims; and that the claim of Howard L. Woodruff is allowed in the sum of $54,118.79, the claim of Margueritte B. Woodruff is allowed in the sum of $62,039.00, and the claim of Leonard Woodruff Jr. is allowed in the sum of $32,039.00.

It is further Ordered and Decreed that the petition for review of the referee's order allowing in full the claim of Willie May Woodruff is sustained; that the referee's order is modified, and that the claim of Willie May Woodruff is allowed in the sum of $18,000.00, and is otherwise disallowed.

EUGENE RICE.
United States District Judge.

Filed June 24, 1944. John H. Pugh, Clerk, U. S. District Court by R. Kizzire, Deputy Clerk.

Notice of Appeal.

To the Clerk of the U. S. District Court, Muskogee, Oklahoma:

169 You are hereby notified that Wille May Woodruff, claimant herein, hereby appeals to the Circuit Court of Appeals for the Tenth Circuit from the order entered herein on June 24, 1944, reducing her claim to $18,000.00 and disallowing her claim for all in excess of $18,000.00, which order reversed the order of the Referee allowing her claim in full.

WILLE MAY WOODRUFF, Appellant

W. W. POTTER,
Attorney for Appellant.

Filed July 21, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

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170 [An appeal bond in the sum of $250.00, with Willie Mae Woodruff as principal and Howard L. Woodruff as surety, was filed July 21, 1944.]

Notice of Appeal

To the Clerk of Said Court and M. E. Heiser, the Judgment Creditor:

171 Notice is hereby given that Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Belle Woodruff, objectors to the claim of M. E. Heiser in the above entitled matter, hereby appeal to the Circuit Court of Appeals for the Tenth Circuit from the order of the Court entered herein on the 24th day of June, 1944, reversing the order of the

Referee in Bankruptcy disallowing the claim of said M. E. Heiser and ordering that said claim be allowed in full.

THOS. W. CHAMPION,
LOUIS A. FISCHL,
W. W. POTTER,
Attorneys for the Appellant.
By LOUIS A. FISCHL,
One of said attorneys.

Filed July 21, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

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172 [An appeal bond in the sum of $250.00, with Leonard J. Woodruff et al. as principals and J. H. Harrell as surety, was filed July 21, 1944.]

Statement of Points on Which Appellant Intends to Rely On Appeal.

178 The appellants, Willie Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., Ida Belle Woodruff and Leonard J. Woodruff, intend to rely upon the following points upon appeal herein to secure a reversal or modification of the order of the District Court reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that the claim of M. E. Heiser be allowed in full, to-wit:

1. The order appealed from permits a claimant in bankruptcy to realize upon a claim for $278,631.71, which claim is not founded upon a real debt, is without merit, is unjust and unconscionable. Such order violates the spirit and intent of the Bankruptcy act, looks to the form rather than the substance of said claim and in so doing, denies substantial right and justice, permits a fraud to be perpetrated upon a Bankruptcy Court; permits a claimant in bankruptcy to profit by fraud and perjury and permits a fictitious and *fradulent* claim to participate in an equitable distribution of assets by a Court of Equity.

2. The Court erred in not reviewing the evidence offered

in support of the objections to the claim of M. E. Heiser and in not making findings of fact thereon for the purpose of determining whether said claim is founded upon a real debt, is meritorious, right and just and is entitled to participate in an equitable distribution of the assets of the bankrupt estate.

3. The Court erred in not reviewing the evidence offered in support of the objections to the claim of M. E. Heiser and making findings of fact thereon for the purpose of determining whether said claim should be, (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of other creditors.

179 4. The order of June 24th, 1944, in contrary to the evidence in the case and contrary to the law of the case.

5. The Court erred in holding that the Referee in Bankruptcy did not have jurisdiction, power, authority and right to hear evidence on the claim of M. E. Heiser for the purpose of determining whether said claim should be (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of other creditors in said matter.

6. The Court erred in holding that the judgment underlying the claim of said M. E. Heiser, to-wit: the judgment rendered in favor of said M. E. Heiser in case No. 7256C in the United States District Court for the Southern District, Central Division, of the State of California, and which underlies his claim herein and the proceedings in said case after the rendition of said judgment, precluded the Referee in Bankurptcy from hearing evidence in support of the objections to the claim of said M. E. Heiser on the theory that said judgment and the subsequent proceedings in said case are res judicata of the right, power, authority and jurisdiction of a Court of Bankruptcy to hear evidence and ascertain the facts for the purpose of determining whether said judgment is founded upon a real debt, is meritorious, right and just and the claim founded thereon is entitled to be allowed in full and to participate in the distribution of the assets of the bankrupt estate upon a parity with all other claims therein and either in whole or in part.

7. The Court ered in holding that said judgment in case No. 7256C and the subsequent proceedings therein barred and estopped the Referee from hearing evidence in support of the claim founded upon said judgment.

8. The Court erred in holding that the proceedings by P. M. Jackson, Trustee in Bankruptcy herein, wherein he sought leave to *intervene* and be heard in said case No. 7256C in the United States District Court for the Southern District, Central Division, of the State of California in which said judgment was rendered, was a proceeding involving the merits of the controversy in said case and that the order denying said trustee permission to intervene and be heard therein was an adjudication upon the merits of the objections filed and urged to the claim of M. E. Heiser filed herein and therefore res judicate of the right of the Referee
180 in Bankruptcy to hear evidence in support of the objections to the claim of the said M. E. Heiser for the purpose of determining whether said claim should be, (1) allowed in whole or in part, (2) disallowed, or, (3) subordinated to the claims of the other creditors herein.

9. The Court erred in not affirming the order of the Referee in Bankruptcy denying the claim of the said, M. E. Heiser for the reason that the order of the Referee is a just and proper order and is supported by the evidence in the case and is within the jurisdiction, power and authority of the Referee in Bankruptcy and of the Bankruptcy Court

W. W. Potter,
Thos. W. Champion,
Louis A. Fischl,
Attorneys for Appellants.

Filed Aug. 4, 1944. John H. Pugh, Clerk, U. S. District Court.

Statement of Points on Which Appellant Intends to Rely on Appeal.

181 Comes now the appellant, Wille Mae Woodruff, and states that she intends to rely upon the following points upon appeal herein to secure a reversal or modifica-

tion of the Order of the District Court, dated June 24th, 1944, reversing the Order of the Referee in Bankruptcy, and disallowing the claim of this appellant almost in its entirety.

1. The order *appealled* from is contrary to the evidence in the case, and contrary to law in the case.

2. The court erred in not reviewing the evidence in support of the claim of this appellant, Wille Mae Woodruff, so as to ascertain that the uncontradicted evidence showed that this appellant received from her separate property the sum of $813,000.00; that of said amount there was delivered to her trustee, Leonard J. Woodruff, bankrupt, the sum of $569,000.00; that said sum was delivered under a trust created in 1920, and that it was never repudiated. The evidence further disclosed that at all times between 1920 and 1939 Leonard J. Woodruff, trustee for Wille Mae Woodruff, was the owner of a great deal of property located in several states in the United States, and that at all times Wille Mae Woodruff thought said property was of a value far in excess of the amount of money held in trust by said trustee, and that at no time did this appellant think her property or money was lost or in danger of being lost.

3. The court erred in not reviewing the evidence in support of the claim of this appellant and not making findings of fact thereon, finding that said trust was created and that all money delivered to the said trustee was under said trust agreement, and was to be invested solely for the benefit of this appellant.

182 4. The court erred in not reviewing the evidence in support of said claim, and in not making findings of fact, finding that bonds were purchased by the said trustee with the money of this appellant, and that this appellant was never returned her principal, interest, or dividends.

5. The court erred in making the following findings of fact in his memorandum, dated June 23rd, 1944, in connection with the claim of Wille Mae Woodruff, to-wit:

"Wille Mae Woodruff, the wife, bases her claim upon a trust created in her behalf whereby the bankrupt in the capacity of trustee handled her money and made investments

for her. Admittedly, the bankrupt under an oral agreement with his wife at a time when both were prospering, invested his wife's money in securities, buying and selling them very much as he pleased. It was the wife's contention that the bankrupt was not to speculate with her funds. The evidence, however, discloses that the wife was at all times informed generally as to the transactions being had by the bankrupt. The investments by the bankrupt were in various securities, and when the crash came most of the bankrupt's cash and that of the wife were lost. The bankrupt had been purchasing stocks on a marginal basis on the New York Stock Exchange. In 1931 the bankrupt had difficulties with the United States government in connection with his income taxes. All his cash and securities, and all of his wife's cash and securities with the exception of $18,00.000, was required to relieve the *bankrut* of the difficulties in which he found himself. The record discloses that the wife knew in general how the bankrupt was handling his money and that she acquiesced therein.

"My conclusion is that the wife authorized the bankrupt to invest her money in any way in which the bankrupt in good faith believed would be to the best interest of his wife. The wife does not question the good faith of the bankrupt. On the contrary, she admits it. The wife knew in 1931 that her securities were being sold to pay income taxes and that she had lost her investments, yet she made no objection until the institution of this bankruptcy proceeding. Under this state of the record, the claim of the wife should not have been allowed in excess of $18,000.00. The referee's decision allowing the claim in full is reversed, and said claim is allowed for $18,000.00 and no more."

for the reason that said findings are contrary to the evidence.

6. The court erred in not affirming the Order of the referee in bankruptcy allowing the claim of this appellant, Wille Mae Woodruff.

7. The objecting claimant, M. E. Heiser was without power and authority to appeal from the order of the referee allowing the claim of this appellant.

8. The District Court was without jurisdiction to review the order allowing the claim of this appellant upon the petition for review of the claimant, M. E. Heiser.

W. W. Potter, Ardmore, Okla.
Attorney for Appellant.

Filed Aug. 7, 1944. John H. Pugh, Clerk, U. S. District Court.

Designation of Record on Appeal.

183 Comes now the appellant, Wille Mae Woodruff, and designates the following record on appeal herein:

1. Petition in Bankruptcy (without schedules).

2. Order of adjudication in Bankruptcy and Reference.

3. Order of Reference approving and allowing claim of Wille Mae Woodruff.

4. Claim of M. E. Heiser.

5. Supplement to claim of M. E. Heiser.

6. Order of Referee denying claim of M. E. Heiser.

7. Objections to claim of Wille Mae Woodruff made by the objector, M. E. Heiser.

8. Transcript of testimony on the proof of claim of Wille Mae Woodruff, and objections to claim of Wille Mae Woodruff.

9. Exhibits introduced adhering on proof of claim, and objections to claim numbered one to *eihty* (1-80) inclusive.

10. Order of June 24, 1944, by the Hon. Eugene Rice, District Judge, allowing in part, and disallowing in part the claim of Wille Mae Woodruff.

11. Memorandum of the Hon. Eugene Rice dated the 23rd day of June, 1944.

12. Assignment of Error.

13. Notice of Appeal, Wille Mae Woodruff, appellant, from the Order of the Hon. Eugene Rice, District Judge, dated June 24th, 1944.

14. Bond on Appeal.

15. This designation of Record on Appeal.

16. Petition for Review.

17. Certificate for Review.

18. Findings of fact and conclusions of law of Eugene Rice, District Judge, made in connection with his order of June 24th, 1944, disallowing in part and allowing in part the claim of Wille Mae Woodruff.

184 19. It is the intention to designate the entire record in this case with the reference to the claim of Wille Mae Woodruff, and the objections hereto filed by the claimant, M. E. Heiser, and the hearings thereon, and all exhibits and all evidence, avoiding duplications and omitting only such parts of the record and of the evidence as are duplcations.

Dated this the 4th day of August, 1944.

W. W. POTTER, Ardmore, Okla.
Attorney for Appellant.

Filed Aug. 7, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Application for Leave to Prosecute Appeal.

185 Come now, Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr. and Ida Belle Woodruff, and respectfully show to the Court that the Referee in Bankruptcy on August 30th, 1940, entered an order in this case staying the administration in bankruptcy of the debtor herein and granting creditors permission to contest the claim of other creditors. Said order is of record in this Court and reference to the same is hereby made for a more particular description thereof. These appellants are creditors of said debtor. One M. E. Heiser also claiming to be a creditor, filed a claim before the Referee in Bankruptcy to which these creditors objected and upon hearing said objections, the Referee in Bankruptcy denied the claim of the said M. E. Heiser from which order

denying his claim said Heiser filed his petition for review by this Court and upon said petition for review, this Court, on June 24th, 1944, entered an order reversing the order of the Referee in Bankruptcy denying the claim of said Heiser and ordering that said claim be allowed in full. Thereafter and within due time, these appellants, along with the debtor herein, Leonard J. Woodruff, filed their notice of appeal from said order to the Circuit Court of Appeals, together with bond on appeal, designation of record on appeal and statement of points to be relied upon on appeal.

Appellants further show to the Court that they are now filing an application for an order of the Court directing the transmission to the Circuit Court of Appeals of the original exhibits and depositions introduced in the hearing before the Referee in Bankruptcy.

Appellants further show to the Court that is the general rule in bankruptcy that one creditor cannot appeal from an order allowing the claim of another creditor. Appellant does not know whether said rule applies in this case because this matter is now pending upon the debtor's petition for an arrangement of his unsecured debts and under the order of August 30th, 1940 administration proceedings in bankruptcy have been stayed and creditors therein were given
186 permission to contest the claims of other creditors but appellants say that they are sincere in their appeal to the Circuit Court of Appeals from the order of this Court allowing the claim of M. E. Heiser and they desire that said Court pass upon said matters and in order that there may be no question about the right to prosecute said appeal from the order of this Court of June 24th, 1944 aforesaid, they ask the Court that an order be entered herein permitting them as creditors of said debtor to appeal to the Circuit Court of Appeals from the order of this Court of June 24th, 1944 allowing the claim of the said Heiser.

In connection with this application, appellants show that the same could not be presented before the notice of appeal was given herein for the reason that said Honorable Eugene Rice, Judge of this Court, has been outside of the State of Oklahoma since on or about July 1st, 1944 and only returned to this district on or about August 7th, 1944.

Wherefore premises considered, appellants pray the Court for an order permitting them to appeal to the Circuit Court of Appeals from the order of June 24th, 1944 reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and allowing said claim in full.

W. W. POTTER,
THOS. W. CHAMPION,
LOUIS A. FISCHL,
Attorneys for Appellants.
By LOUIS A. FISCHL,
One of said attorneys.

Filed Aug. 9, 1944. John H. Pugh, Clerk, U. S. District Court. By R. Kizzire, Deputy Clerk.

Order Permitting Creditors to Prosecute Appeal.

189 Now on this the 21st day of August, 1944, at Muskogee in said district, is presented to the court the application of Leonard Woodruff, Jr., Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, and Ida Belle Woodruff for leave to prosecute an appeal herein to the Circuit Court of Appeals from the order of the court entered in this cause on June 24th, 1944, reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that said claim be allowed in full. The applicants appear by their attorney of record, Louis A. Fischl. The court finds that notice of this hearing has been given to all interested parties and that no other appearance is made at this time.

The court finds that the applicants, Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., and Ida Belle Woodruff, are creditors of the debtor, Leonard J. Woodruff, and have claims that have been allowed in said bankruptcy proceedings; that said proceeding is pending upon a petition for an arrangement and an order of the Referee in Bankruptcy entered August 30th, 1940, staying administration in bankruptcy and granting creditors permission to contest the claims of other creditors.

The court further finds that the applicants herein have

filed notice of appeal to the Circuit Court of Appeals from said order of June 24th, 1944, together with bond on appeal, designation of record on appeal and statement of
190 points to be relied upon on appeal. Applicants made no request upon the trustee in bankruptcy to appeal from the order of this court reversing the order of the Referee in Bankruptcy and directing that the claim of M. E. Heiser be allowed in full. The application is made to this court by reason of the uncertainty as to whether or not in this particular proceeding and under the order of the Referee in Bankruptcy entered on August 30th, 1940, the applicants have the right to appeal without an order of the court.

The reason this application was not presented to the undersigned judge before the expiration of time for the filing of notice of appeal is that the undersigned judge was out of the state of Oklahoma from the 4th day of July, 1944, until the 7th day of August, 1944. Whether or not the applicants are proper parties to prosecute an appeal presents a legal question that may, and no doubt will, be raised in the Circuit Court of Appeals. If an order of this court is necessary for them to prosecute the appeal, the court is quite willing to enter the order, and due to the uncertainty of the law the court does enter the order.

It is therefore ordered that the application for leave to prosecute appeal to the Circuit Court of Appeals by the creditors Wille Mae Woodruff, Howard L. Woodruff, Marguerite Woodruff, Leonard Woodruff, Jr., and Ida Belle Woodruff, from the order of this court of June 24th, 1944, reversing the order of the Referee in Bankruptcy denying the claim of M. E. Heiser and ordering that the same be allowed in full be, and the same is hereby, granted and said applicants are given permission to prosecute an appeal herein from said order to the Circuit Court of Appeals.

EUGENE RICE, Judge.

Filed Aug. 21, 1944. John H. Pugh, Clerk, U. S. District Court.

Order Extending Time to Lodge Record on Appeal.

191 Now on this 23rd day of August, 1944, it appearing that the Clerk of this Court requires additional time within which to prepare and transmit transcript of record on appeal of the appellants Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Bel[illegible] Woodruff; and good cause appearing therefor.

It is therefore ordered that the time for lodging the record on appeal of said appellants Leonard J. Woodruff, Willie Mae Woodruff, Howard Woodruff, Marguerite Woodruff, Leonard Woodruff Jr. and Ida Belle Woodruff; be and is hereby extended to and including the 30th day of September, 1944.

EUGENE RICE,
U. S. District Judge.

Filed Aug. 23, 1944. John H. Pugh, Clerk, U. S. District Court.

Geo. F. Clark,
Referee

Department of Justice

Eastern District of Oklahoma
Office of Referee in Bankruptcy
McAlester, Oklahoma, July 21, 1944.

Mr. John H. Pugh, Clerk, U. S. District Court, Muskogee, Okla.

Dear Sir: Re: Leonard J. Woodruff, in Bankruptcy No. 7623.

193 Enclosed find transcript of hearings on M. E. Heiser Claim, Nov. 15, 16, 18, 22 and 26, 1940 which has not been transcribed.

Yours truly,

GEO. F. CLARK.

[Transcript of Proceedings, November 15, 16, 18, 22 and 26, 1940.]

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195 Now on this the 15th day of November, 1940, the above styled matter came on for hearing herein, the bankrupt, Leonard J. Woodruff being present in person and by his attorneys, Champion & Fischl, the claimant, M. E. Heiser, being present by his attorney, Rupert Beach Turnbull of Los Angeles, California, and the other claimants herein being present in person and by their attorneys, after which the following testimony was offered in support of the M. E. Heiser claim.

By Mr. Turnbull, of Counsel for M. E. Heiser:

If the Court please, in support of the claim filed by M. E. Heiser, based on a judgment, the claimant now offers in evidence first the claim as filed by M. E. Heiser, together with the exhibits thereto—the certified copies attached thereto as Claimant's Exhibit "A".

By Mr. Casey: If the Court please, I don't know what the certified copies are.

By Mr. Turnbull, of Counsel for M. E. Heiser:

The instruments attached, or the instrument attached is certified under the District Court rules, it is in proper
196 form and is proper evidence; we offer the claim itself as our Exhibit "A".

By the Court: All right.

By Mr. Turnbull, of Counsel for M. E. Heiser:

We also offer in evidence the supplement to the claim of M. E. Heiser.

By Mr. Casey: May I see it?

By Mr. Turnbull: It is in the file.

By Mr. Casey: I am entitled to see it I think. You are offering the supplement?

By Mr. Turnbull: To the proof of claim of M. E. Heiser, yes, sir, and I will offer testimony in support of the matters therein stated. The Statutes require certain forms and I want to show we have complied with the rules is regard to that form.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial and is secondary evidence and is self serving and an attempt to avoid a deposition, by voluntary statements of the claimant; the so-called alleged claim is only a statement made by the claimant, when he is not present and cannot be cross examined and it is self serving.

By Mr. Turnbull: It is to show the claimant in fact complied with the orders and rulings of the Court in the filing of the claim in the matter of the general orders of the Court
under the code, it does show conformity to the law
197 and I do expect to offer the documentary proof but
we are showing we have filed it in the form required by law, that is what we are showing now.

By Mr. Casey: That is true, but they should have Mr. Heiser present.

By Mr. Turnbull: The objections have been filed and the burden is upon the claimant to establish his claim by proof and that is what we are attempting to do.

By Mr. Casey: This is the so-called supplemental claim or supplement to the claim and it is only a self serving statement.

By the Court: That would not be considered as testimony, that goes to the consideration for the indebtedness I presume.

By Mr. Turnbull: May it be admitted as Claimant Heiser's Exhibit "B".

By the Court: Yes, as far as the statement and all, it will not be considered as far as the statements are concerned

By Mr. Turnbull: We offer in evidence an exemplified copy of the complaint for damages in the case of M. E. Heiser vs. Leonard Woodruff, and others, No. 7256 C in the District Court of the United States for the Southern District

of California, Central Division, and ask that it be marked as Claimant Heiser's Exhibit "C".

By Mr. Casey: I do not see the relevancy of the complaint on which the judgment is based.

198 By Mr. Turnbull: We expect to show this judgment was a final judgment, that it was attacked by the trustees in favor of the creditors and certain issues were raised and to have those issues before the Court this case would be res judicata and your Honor could tell if it was within or without the issues, and it is proper that the character of the claim—

By Mr. Casey: We are not here on the question of any man's discharge, that is all immaterial here, the complaint and the proceedings in that case, the proof of the debt or of the claim must be in the statement, and that is sufficient as far as the claim itself is concerned, and this has nothing to do with whether or not this claim is allowed, and it has nothing to do with this proceeding this morning.

By Mr. Turnbull: We have a right to show this judgment is a final judgment and the right to show that it is res judicata and cannot be attacked by anyone at this time, and further that the trustee under the order of the Court, upon the application of the trustee, the Court made an order permitting the trustee or ordering the trustee to attack this

199 claim and the trustee went to the State of California for that purpose. It will be contended here that the matter is not res judicata and your Honor will be called upon to determine that issue and you will have to know what the judgment roll was and what was decided. It will be contended by the claimant Haiser that the trustee instituted an independent action attacking this judgment, that action was tried and it went to the Court of Appeals and it was held there that it was an attack upon the final judgment, and if that is true your Honor will have to pass upon what matters are res judicata. The Courts have repeatedly said that you are entitled to show the record of the case to determine what is res judicata, what issues were raised or determined, or could have been determined, this was not a default judgment, evidence was offered in support

of the judgment and the defendant came in and it was stipulated that he could offer proof, documentary proof as to that judgment and you will have to determine whether that or this is res judicata and whether or not that became a final judgment, and whether the full faith and credit shall be given by this Court to a Court of equal dignity and unless you have that proof when your Honor goes into it, when your Honor has to decide that issue, how could you decide it.

200 By Mr. Casey: I do not disagree with the statement at all, but the way he is doing it, he is offering proof of something not in the claim. If this is a non-dischargeable obligation the place to put that is in the claim, but to show this is res judicata he must show the judgment roll, not the complaint and such papers of the judgment roll that suits his purpose but the judgment roll itself, how can you determine, you offer the complaint and do not offer the answer, how can your Honor decide the matter?

By Mr. Turnbull: If the Court please, I am offering all of these instruments and there was a trial on the merits for ten days, I make that statement as a voluntary statement in this case.

By Mr. Casey: If the Court please, he makes that statement but it is not true, a trial upon the merits of the case has never been had, the trial was upon the matter of whether the default should be set aside, the merits of the case was never gone into. The judgment roll will show what was done. Counsel says it was tried on its merits, I know that it was not. The action upon the motion to set aside the

201 judgment will not show what took place in the Court and the judgment roll is the only thing that will show, but he has no right to show the complaint, a certified copy of the complaint instead of the judgment roll, I don't know personally, I have not gone through it, but I do know personally there was never a trial on the merits in that case.

By the Court: Let it go in.

By Mr. Turnbull: I offer an exemplified copy of the summons in the case of M. E. Heiser, vs. Leonard Woodruff, and others, No. 7256-C Law together with the return of the United States Marshal, together with the certificate and

affidavit of service of the United States Marshal and the certificate of the Clerk of that Court as Claimant's Exhibit "C", and it is offered for the purpose of showing jurisdiction.

By Mr. Casey: We make the same objection, it is an attempt to offer in this case certain instruments without offering the judgment roll and it is incompetent, irrelevant and immaterial.

By the Court: Overruled.

By Mr. Turnbull: I show counsel before offering it the affidavit of Leonard J. Meyberg, which is an application for the entry of a default judgment and also the praecipe
202 for the entry of default judgment or for the entry of default against the defendant, Leonard Woodruff, duly exemplified by the Clerk and the Judge of the District Court of the United States for the Southern District of California, the Central Division, as Heiser's Exhibit "E".

By Mr. Casey: To which we make the same objection.

By the Court: Overruled.

By Mr. Turnbull: I offer in evidence a certified copy of a judgment in the case of Heiser vs. Woodruff, in the same case, and in the same Court as our Exhibit "F".

By Mr. Casey: To which we make the same objection and further it does not appear that this is a final judgment and it never became final.

By Mr. Turnbull: I will show it became final, if the Court please.

By Mr. Casey: That should be done by the judgment roll.

By Mr. Turnbull: I have to produce the record on appeal from another Court and this is the judgment from which the appeal was taken.

By the Court: Overruled.

By Mr. Turnbull: I show to counsel an exemplified copy of a notice of motion to set aside default and default judg-

ment by his attorneys Ames Peterson and Edward Fitzpatrick, duly certified.

By Mr. Casey: We make the same objection, if the Court please.

203 By the Court: Overruled.

By Mr. Turnbull: If there is not any changes, or anything special to be called to the attention of the Court by counsel, the original objection may be made in each instance where we offer these exhibits, if the Court please, as far as we are concerned.

By the Court: That will be all right.

By Mr. Turnbull: The notice of motion to set aside default and default judgment, together with acknowledgment of the receipt of a copy of the same I believe is our Exhibit "E". I offer in evidence an affidavit of attorney Robert L. Beveridge in answer to references to him in plaintiff's affidavit of opposition to defendant, Leonard J. Woodruff's motion to set aside default and default judgment as Claimant's Exhibit "H".

By Mr. Casey: To which we make the same objection and furthermore this is an attempt to get directly into evidence without complying with the rules of deposition and without being subject to cross examination and is incompetent, irrelevant and immaterial and it is not binding upon the parties in this case.

By the Court: I do not know whether or not it would be binding on the parties in this case.

By Mr. Turnbull: It is to show the pleadings and the issues raised.

204 By the Court: And what is this?

By Mr. Turnbull: It is an affidavit made by Mr. Beveridge on behalf of his client. The Courts say it is not only matters that were raised by the parties or by the issues but what should have been raised. They raise the question by affidavit and in an equitable Court, which try equity matters, those questions were raised by affidavit.

By Mr. Casey: The trustees and the creditors were not a party to that case.

By the Court: What would be construed as evidence are not part of the pleadings.

By Mr. Turnbull: A great many courts hear equitable cases upon affidavits. This is offered, not in support of the judgment shown in the affidavit but to show what issues were raised in that case or could have been raised.

By Mr. Casey: This is not filed in the Jackson case.

By Mr. Turnbull: It was filed in the case of M. E. Heiser vs. Leonard Woodruff, No. 7256-C.

By Mr. Casey: But that is not the Jackson case.

By Mr. Turnbull: No, but it is elementary and it has been held in this circuit that the issues raised or matters determined by the final judgment or the matters that were raised or could have been raised by the parties, that is the determining factor.

By Mr. Casey: If we produce an affidavit by Mr. Woodruff denying or contradicting anything in the affidavit made by opposing parties could we introduce it here, and
205 that is the reason we are insisting that the judgment roll in its entirety should be introduced and that is what is binding upon the parties.

By the Court: The objection is sustained.

By Mr. Potter, of Counsel for Willie Mae Woodruff:

May it be stipulated and agreed that the objections now being made by Mr. Casey may be considered also upon the part of the other objectors?

By Mr. Turnbull, of Counsel for Mr. Heiser:

That is all right, if the Court please, without re-stating their objection, that may be so considered as far as we are concerned.

By the Court: Very well.

By Mr. Turnbull: We except to the ruling of the Court and offer to prove at this time by an exemplified copy of

the affidavit of Robert L. Beveridge in answer to references to him in plaintiff's affidavit of opposition to defendant Leonard Woodruff's motion to set aside default and default judgment filed in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendant, No. 7256-C, that a certain issue was raised by the defendant Woodruff, through his then counsel, Robert L. Beveridge, and for the purpose of making this offer of proof, I desire to have this exhibit marked as Heiser's Exhibit "H".

206 By the Court: The offer and tender of proof is rejected.

By Mr. Casey: You mean by that our objection is sustained?

By the Court: Yes, sir.

By Mr. Turnbull: Exception.

By Mr. Casey: And the tender of proof is denied?

By the Court: Yes.

By Mr. Turnbull: I show counsel and offer in evidence an exemplified copy of the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default.

By Mr. Casey: You also offer the affidavit attached thereto?

By Mr. Turnbull: I offer the instrument and the exhibits attached thereto, which is properly certified.

By Mr. Casey: I am replying upon the statements of what he is offering.

By Mr. Turnbull: That is what the instrument is entitled a reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default; that is what I am offering as Heiser's Exhibit "I", and I said I offered Exhibit attached thereto.

By Mr. Casey: We make the same objection as before and call your Honor's attention in addition to the reply so called that purports to be an affidavit of M. E. Heiser

207 attached thereto and the brief which is no part of the judgment roll or any evidence in this case. This docu-

ment contains some forty or fifty pages and is a list of authorities.

By the Court: Let that portion of the reply be admitted which is a part of the judgment roll.

By Mr. Turnbull: The judgment roll in this case would have ended in the judgment if they had not come in and filed a motion to vacate and the Court heard evidence and then they came back and moved to set aside the judgment on this evidence, and we are entitled to show what took place at that time.

By Mr. Casey: I contradict that, no evidence was offered on the judgment in this case, your Honor. I think you are correct that part of this is the judgment roll and is admissible, I think that is correct. I believe there is a mandate in that case.

By Mr. Turnbull: I have it, yes, sir.

By Mr. Casey: And if the Court please, this is a legal argument and a long list of cases and it is and does constitute the briefs in that case and I am amazed that the Clerk would put that in the judgment roll.

By Mr. Turnbull: I show here to counsel the judgment and it recites, "and the default of said defendant, Leonard Woodruff having been entered" and then it goes on
208 to say that upon the application of plaintiff the matter having been brought before the Court for hearing, the Hon. Geo. Cosgrave presiding, the evidence having been introduced in open session of this Court, and so forth.

By Mr. Casey: And what matter is that?

By Mr. Turnbull: May I address the Court without interruption?

By Mr. Casey: I object to the gentleman reading anything into the evidence.

By Mr. Turnbull: This is in evidence, this is Heiser's Exhibit "F", the matter came on for hearing and the Court heard the evidence and the Court being fully advised in the premises.

By Mr. Casey: If the Court please, I stand on my state-

ment, my statement is not wrong and it is not ignorance when I say that no evidence was offered in that case, there was no trial on the merits in this case at all.

By Mr. Turnbull: We have before us at this time and I offer in evidence an exemplified copy of the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside the default as our Exhibit "I".

By Mr. Casey: We object to it as a self serving statement and it is incompetent, irrelevant and immaterial and could not possibly have anything to do with the judgment roll.

209 By the Court: The objection is sustained.

By Mr. Turnbull: Exception and at this time may the instrument be marked for identification as Heiser's Exhibit "I".

By the Court: Yes, that may be done.

By Mr. Turnbull: At this time the claimant Heiser offers to prove by the exemplified copy, duly exemplified by the certificate of the Clerk of the Court of the United States, Southern District of California, Central Division, the reply in opposition to defendant Woodruff's additional point and authorities on his motion to set aside default.

By the Court: I don't understand that instrument to be a reply, it is really an argument. I can't see wherein it is a reply and the objection thereto is sustained.

By Mr. Turnbull: Exception, we now offer in evidence a certified copy and an order of the Court, the District Court for the United States, Southern District of California, Central Division upon the motion of Leonard Woodruff to vacate and set aside default judgment rendered against said defendant.

By Mr. Casey: We object to it upon the same ground as heretofore stated and call your Honor's attention to it again. This judgment roll does not show this is a final judgment and he is merely introducing in this record a part of the judgment roll.

210 By Mr. Turnbull: This is offered as our Exhibit "J", if the Court please.

By the Court: All right, let it be admitted for what it is worth.

By Mr. Turnbull: I present to counsel and offer in evidence as Heiser's Exhibit "M" an exemplified copy of the amended order of the minutes of the Clerk for the District Court of the United States for the Central Division of the Southern District of California in the matter of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendant, No. 7256-C-Law, relating to the proceedings had on the 12th day of June, the 19th day of June, the 22nd day of June and the 23rd day of June, 1939, respectively, in reference to the judgment already in evidence in that case.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial and we understand it to be a lot of minutes of the Court room Clerk and not orders made by the Court.

By Mr. Turnbull: This becomes material for this reason, the California Court first had jurisdiction because the defendant Woodruff was served regularly with summons in that jurisdiction and it had jurisdiction again because
211 Woodruff appeared in the case and entered into certain stipulations in regard thereto, especially in regard to the value of the damages in that case. They raised certain jurisdictional questions in that case and this is one of them, and I want to show he appeared and participated and introduced certain evidence as to the value of the property and participated in that matter which ultimately resulted in a final judgment and to show that I have to show what evidence he introduced and the effect of it, and I want to show the various exhibits offered, the various exhibits and documents and so forth and to show he participated and that is the reason I am trying to show it now, because when we get through with the proof we will or will not have proven the Court had jurisdiction to enter judgment and will or will not have proven the Court entered judgment that became final and to do that I am trying to show the proceedings had and the formal appearance of Mr. Woodruff and that he did offer this proof which resulted in this

judgment that he is now complaining of and to show it by the record is the only way I know.

By Mr. Casey: It must appear in the judgment roll. The Court may have or may not have jurisdiction over me and I may appear by special appearance and after
212 that is overruled I may offer proof and testimony and if the Court does have jurisdiction the judgment roll will so show and in our opinion the Clerk should prepare a proper judgment roll, there is a proper way to show it. If we were trying this in the Southern District of California the Judge would not let these exhibits be introduced, you would take the whole judgment roll and offer it. He may have it all but I do know that these statements and affidavits are not part of the judgment roll.

By the Court: Overrule the objection.

By Mr. Turnbull: I present to counsel and will offer in evidence a certified copy of the proceedings had on the 27th day of June, 1939, in the same case showing the presence of Leonard J. Woodruff in the trial of that matter and also under the same certificate and the same cover the proceedings had on the 28th day of June, 1939.

By Mr. Casey: We object to the minutes of the Clerk, these are not the orders of the Court or the record of the Court. It seems here the Clerk enters up the history of what he thought took place and it is no part of the proceedings, a mere blotter purported memorandum of what the Clerk thinks took place.

213 By Mr. Turnbull: To show that, if the Court please, we are offering the exhibits.

By Mr. Casey: That is not the record of the Court, that is what the Court thinks.

By Mr. Turnbull: The Clerk does make up the record, makes a record of the exhibits offered and numbers them and who offered them, and that is all this is offered for, trying to prove he was there participating at that time.

By Mr. Casey: This proceeding of the trial of the controversy between Mr. Heiser and Mr. Woodruff on its merits, is that what you claim this is?

By Mr. Turnbull: Part of it.

By Mr. Casey: You mean part of the trial on its merits?

By Mr. Turnbull: The Clerk says the Court determines the matter that was submitted or might have been submitted.

By Mr. Casey: This instrument contradicts the statements of counsel that it was a hearing on its merits.

By Mr. Turnbull: If the Court please, we will argue it at the end of the case.

By the Court: For what purpose is this offered?

By Mr. Turnbull: To show upon the motion to vacate the judgment, to vacate the default upon the application of Mr. Woodruff, and it allowed him eight days to show his evidence, to make his proof and that he appeared
214 in that action and the Court had jurisdiction only by the service of summons upon him, not only by the service of summons upon him but he appeared in the trial. Mr. Woodruff was present and the Court said, "We will hear evidence on a portion of it," and Mr. Woodruff participated therein and your Honor will be required to say whether or not this judgment was a good judgment and one of the grounds is that the defendant appeared and participated in the trial upon at least a part of the issues and the Clerk's minute shows he came in and participated in the trial of that case, and there was no question raised about the jurisdiction.

By Mr. Casey: If the Court please, it all resolves itself down into being an ex parte statement made by a party not by the Court.

By Mr. Turnbull: They are a part of the Court records.

By Mr. Casey: They do not show whether they were made by Mr. Heiser or Mr. Turnbull or anyone else.

By Mr. Turnbull: If the Court please, here is a certificate as to what these minutes are.

By Mr. Casey: As to what someone said it is.

By Mr. Turnbull: It is a certificate by Mr. R. S. Zim-

merman Clerk of the Court, and it says it is a true copy of the minutes entered therein on June 27th and June 28th, 1939. The District Judge does not certify to the minutes but this is the minute orders in that case and so certified by the Clerk.

215 By Mr. Casey: This does not prove they are correct.

By Mr. Turnbull: Counsel can't challenge the fact they are not correct or are not what the Court certifies and says they are. There is only one thing or one question before your Honor, are you going to take the certificate as to what they are or Mr. Casey's statement, the Clerk says they are minute orders.

By Mr. Casey: If you will show me in there that they were made by and at the direction of the Court I will withdraw my objection. This does not show they were minute orders made at the direction of the Court. This has nothing to do with the minute orders and the minutes of the Clerk are not part of the judgment roll.

By Mr. Turnbull: This is the way the Clerk made up the minutes and they show what they are.

By Mr. Casey: The Court did not make those orders.

By Mr. Turnbull: It proves there that Mr. Woodruff appeared and participated generally in that action.

By Mr. Casey: There is nothing here to show that he did not appear specially for the purpose of that motion.

By Mr. Turnbull: He did not appear specially. That was in a Court of equal dignity and equal jurisdiction as this Court and it is the minute order of those two days.

216 By the Court: Overrule the objection.

By Mr. Turnbull: I offer in evidence as Heiser's Exhibit "M" an exemplified copy by the Clerk of the District Court and the Judge of said Court the minute orders of the Court of the 29th of June, 1939.

By Mr. Casey: Same objection.

By Mr. Turnbull: This document shows the action of the Court after hearing the evidence in the case.

By the Court: All right, let it be admitted.

By Mr. Turnbull: I offer in evidence at this time the application, I offer it by reference, in this proceeding the application of P. M. Jackson, Trustee, for authority to employ counsel and institute legal action to set aside the judgment of M. E. Heiser against Leonard Woodruff entered in cause No. 7256-C in the District Court of the United States for the Southern District of California, the Central Division, which was filed in this Court August 23rd, 1939, George F. Clark, Referee, and which purports to be a petition by Mr. Jackson verified by P. M. Jackson before the Hon. George F. Clark as Acting Referee, and we offer in evidence the application by reference which I have shown counsel in its entirety and that is part of your Honor's files.

217 By the Court: All right.

By Mr. Turnbull: The application of creditors for an order directing the trustee to attack this judgment, it is entitled and styled in this case in the District Court of the Eastern District of Oklahoma, No. 7623, signed by W. W. Potter, attorney for the creditors, and it reads as follows:

(Here Mr. Turnbull, of counsel for Mr. Heiser, read to the Court said petition.)

By Mr. Turnbull: And we offer that in evidence by reference and it was filed in this Court before your Honor as Referee August 23rd, 1939. We offer in evidence by reference the order in this case made by this Court authorizing the Trustee to institute legal action to set aside the judgment of M. E. Heiser vs. Leonard Woodruff in the case in California heretofore referred to, and it bears the signature of your Honor and which instrument recites the petition which I have offered and referred to and authorizes the trustee to take proceedings in regard to the Heiser judgment. I would like to ascertain if it is stipulated that that instrument bears the signature of the Court.

By Mr. Casey: Certainly.

218 By Mr. Turnbull: I now present to counsel as Heiser's Exhibit "N" an exemplified copy of the notice of motion to vacate judgment to set aside default, to vacate

orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by J. M. Jackson, Trustee in Bankruptcy, for Leonard J. Woodruff, and to allow the trustee in bankruptcy to intervene.

By Mr. Casey: To which we make the same objection. We make the same objection as to the other proceeding on the motion for the matters in regard to the trustee. The matters brought by the trustee, if the Court please, is an independent action and it has a judgment rol' of its own and it should be proven by that judgment roll.

By the Court: Let it go in.

By Mr. Turnbull: I show counsel an exemplified copy of the affidavit of merits in support of motion to vacate judgment by default and so forth, as made by P. M. Jackson, in the matter of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., defendants, No. 7256-C, for the purpose of showing the action taken by Mr. Jackson and to show the issues raised.

By Mr. Casey: It is incompetent, irrelevant and immaterial and it is an affidavit and contains no part of the judgment roll and it would not be binding upon the
219 parties to this proceeding and it is an attempt to get away from introducing the judgment roll in this case.

By Mr. Turnbull: This is the affidavit of merits in support of motion to vacate judgment by default by Jackson. Mr. Jackson attempted to intervene in the case of Heiser vs. Woodruff and the Court made an order denying him that right and then he filed an attack upon that judgment in the nature of an equitable attack, such as he might have brought for fraud or collusion and that that petition was based upon these affidavits and that was done and Mr. Jackson, an attorney here employed Mr. Cobb to represent him in California, and that matter was presented to the Court, they were in Court under the authority that permitted them to make an independent attack upon the judgment and the Court said, "You are right, that is a final judgment but you can make an independent attack on it for fraud in procurement," and they did entertain it and this is the basis upon which

he attacked it, this is the proceedings upon which he attacked it, and the Circuit Court adjudicated that and said we will divide that against you, these are the pleadings in that case. I rather not go back into this case at all, and I am putting these proceedings in in their chronological order.

By Mr. Casey: You should have the judgment roll in evidence.

By the Court: The objection is overruled, let the exhibit go in.

By Mr. Turnbull: That has been marked Heiser's Exhibit "O" if the Court please. I show counsel now an instrument which has been marked for identification as Heiser's Exhibit "P" and is an exemplified copy of the affidavit of M. E. Heiser resisting the application of Mr. Jackson, trustee in bankruptcy.

By Mr. Casey: We make the same objection, if the Court please.

By the Court: Overruled.

By Mr. Turnbull: We next offer in evidence as Heiser's Exhibit "Q" the affidavit of Leonard J. Meyberg in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, et al., in the District Court of the United States, Southern District of California, Central Division.

By Mr. Casey: The same objection, if the Court please.

By the Court: Let it go in.

By Mr. Turnbull: We next offer in evidence as Heiser's Exhibit "R" an exemplified copy of the minute order of September 26th, 1939, in the same case.

By Mr. Casey: We object to it, if the Court please, same objection.

By the Court: Overruled.

By Mr. Turnbull: If the Court please, we next offer in evidence as Heiser's Exhibit "S", the notice of appeal in the case of M. E. Heiser vs. Leonard Woodruff and others.

case No. 7256-C in the District Court of the United States for the Southern District of California, Central Division.

By Mr. Casey: If the Court please, we make the same objection and there has been no proper foundation laid for its introduction. There are no orders authorizing this man Jackson to take an appeal.

By Mr. Turnbull: That has heretofore been offered in evidence, the authority to prosecute the matter.

By Mr. Casey: Made subsequent to the date of the appeal.

By Mr. Turnbull: Your Honor made an order authorizing the trustee to attack that judgment and I think that is not severable.

By Mr. Casey: That does not authorize him to take an appeal.

By Mr. Turnbull: Counsel has not read the entire order.

By the Court: Overrule the objection.

By Mr. Turnbull: I offer an exemplified copy in the matter of M. E. Heiser vs. Leonard Woodruff and others, in that same case in the District Court for the Southern District of California, an exhibit signed by Francis D.
222 Cobb and by Edward Fitzpatrick entitled appellants' statement of the point on which they intend to rely on the appeal.

By Mr. Casey: If the Court please, I insist that it be put out of this proceeding.

By the Court: Overruled.

By Mr. Turnbull: That has been offered as our Exhibit "T" and I offer in evidence as Exhibit "U" a certified copy signed by the Clerk of the United States District Court, I beg the Court's pardon that is signed by the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit over the seal of the Court as to "appellants' statement of the point on which they intend to rely on the appeal", signed by Francis D. Cobb and Edward Fitzpatrick, attorneys for P. M. Jackson as trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt.

By Mr. Casey: Same objection, if the Court please.

By the Court: Overruled.

By Mr. Turnbull: If the Court please, we now offer in evidence as Heiser's Exhibit "V" a certified copy of the decision of the Ninth Circuit Court of Appeals in the case of P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff vs.
M. E. Heiser, No. 9356 April 30, 1940, certified to
223 by the Clerk of the Court of the Ninth Circuit over the Seal of the Court, being a printed decision as furnished by the Clerk of that Court, and that is offered as our Exhibit "V".

By Mr. Casey: If the Court please, we make the same objection to it.

By the Court: Overruled.

By Mr. Turnbull: I hand counsel an exemplified copy of the mandate of the Circuit Court of Appeals of the Ninth Circuit filed and entered June 19th, 1940, in the matter of Heiser vs. Woodruff, it is the mandate and is offered as our Exhibit "W" and it is signed by Mr. R. S. Zimmerman, Clerk of the United States Court for the Southern District of California, Central Division, as being a part of the records of his office and it shows to have been filed in his office on June 19th, 1940. That is offered as Heiser's Exhibit "W".

By Mr. Casey: To which we make the same objection, if the Court please.

By the Court: I will overrule the objection.

By Mr. Turnbull: The claimant Heiser offers by reference the order approving the trustee's bond, establishing the date of the record of the qualification of the trustee which was filed July 20th, 1939, being order approving trustee's bond.

224 By the Court: All right.

By Mr. Turnbull: I offer in evidence by reference the application of trustee, P. M. Jackson, sworn to the 3rd day of October, 1939, and it recites in the instrument entitled

application of trustee for allowance of expenses for which an appeal is being taken to the Circuit Court of Appeals for this District. Counsel has been objecting to it and now I am offering this to show the trustee made the report to your Honor, that he appeared before your Honor and wanted to take an appeal and asked for authority to proceed with the appeal and for the expenditure of funds necessary in the completion of said appeal and your Honor ordered the trustee to proceed.

By Mr. Casey: If it is the order allowing the trustee to appeal from the order of the District Court of the United States for the Southern District of California, that is all right.

By the Court: Was there a written order on it?

By Mr. Turnbull: Yes, sir, there was.

By Mr. Casey: Then my objection earlier this morning seems to be good.

By Mr. Turnbull: I offer this application for allowance of the expenses by reference.

By the Court: All right.

225 By Mr. Turnbull: I now desire to offer the opinion of this Court in this present case deciding over the signature of the present Honorable Referee, recites the petition last introduced in evidence October 4th, 1939, and recites that the trustee is authorized to appeal the case of Heiser vs. Woodruff, which instrument bears date of October 4th, 1939.

By Mr. Casey: It is incompetent, irrelevant and immaterial for the reason the order authorizes the trustee to take all steps that are necessary and does not say anything about the appeal.

By Mr. Turnbull: If the Court please, I am not taking any chances under any technicality, I want to show the trustee did have express authority.

By the Court: All right.

By Mr. Turnbull: That is the order filed October 4th, 1939.

By the Court: All right.

By Mr. Turnbull: And that is offered by reference.

By the Court: All right.

By Mr. Turnbull: At this time, I offer in evidence the petition by the bankrupt filed in this Court and it is signed by Leonard J. Woodruff by his counsel, Champion, Champion & Fischl, sworn to on the 22nd day of August, 1939, filed August 23rd, 1939, which ends with a prayer that the claim of M. E. Heiser be denied and the trustee authorized to attack said judgment that is attached to that, the
226 complaint and other matters that are already in evidence, I only offer the application, the exhibits were offered this morning.

By Mr. Casey: That is incompetent, irrelevant and immaterial.

By Mr. Turnbull: I want to show every one of the so-called objecting creditors joined with the trustee and with the bankrupt to attack this judgment.

By Mr. Casey: This is a self serving statement, that is all this is.

By Mr. Turnbull: This is an application asking authority by the bankrupt to attack this judgment in favor of Heiser.

By Mr. Casey: We object to it as incompetent, irrelevant and immaterial.

By Mr. Turnbull: I think it is proper for this record notwithstanding the fact that I have been contradicted as to what the instrument is.

By the Court: Overrule the objection, let it go in.

By Mr. Turnbull: They must accept the proof of that statement, it is an application of the bankrupt and it shows for itself.

By the Court: Let it go in for the purpose of showing

that the bankrupt joined in the prayer for an attack upon the judgment.

By Mr. Turnbull: That is offered by reference only. If the Court please, the claimant, M. E. Heiser rests at
227 this time. May it be understood and stipulated with respect to any objections made by the various parties hereto, various objectors that the claimant M. E. Heiser may have an exception to all adverse rulings and that the various objecting creditors may have an exception to all adverse rulings to those parties and may this also apply to the bankrupt's objections, if any.

By Mr. Casey: That is all right with us.

By Mr. Turnbull: The ruling of the Court shall apply to all of them.

By Mr. Fischl, of Counsel for Leonard Woodruff:

In this case Leonard J. Woodruff is a debtor and the trustee is not a party to any of this proceedings and if that question should arise we want it fully understood that this is a proceeding on behalf of the debtor.

By Mr. Turnbull: I stipulate that the rulings and proceedings had apply to all objecting creditors or anyone else.

By Mr. Casey: If the Court please, we offer in evidence a certified copy of the bill of lading dated August 9, 1928, and it shows for itself, and I might call your Honor's attention to the fact the bill of lading sets forth the value, a value of $500.00, and that is attached to the same instrument which was identified and referred to in Heiser's Exhibit "L".

228 By Mr. Turnbull: Is this part of the exhibit in the Heiser case?

By Mr. Casey: It is referred to in the Heiser Exhibit "L" on the second page, your Honor. Yes, it is.

By Mr. Turnbull: This is only part of it.

By Mr. Casey: That is right, your Honor. This is offered to contradict the extent of the judgment, the fact the

judgment should not be for $160,000.00, but should be reduced to the true value of the items mentioned here.

By Mr. Turnbull: At this time the claimant, M. E. Heiser objects to the introduction of any evidence in support of any and all of the objecting creditors objections: First, That the said alleged creditors are not parties, nor are any of them parties who may legally and properly object to the claim of the creditor, Heiser, there being in this case a trustee duly elected and qualified who has heretofore made the same objections unsuccessfully. The rule of law being that only when a trustee who represents all the creditors in law has either neglected, failed or refused to act in opposing a claim can an order be made permitting a creditor to act independently, and then only when the trustee himself has not acted. In this case the trustee has selected the forum to attack the Heiser judgment and has done so upon
229 the written application of the creditors now here objecting after an order of this Court duly made permitting and instructing the trustee to go to California and attack the Heiser judgment.

Second, That the creditors now objecting are bound by the result of the acts of the Trustee, Jackson, who has already objected and has heretofore tested the sufficiency of the Heiser judgment: that said Trustee Jackson, has attacked the Heiser judgment in an independent equity proceeding, and the Ninth *Circuit* Court has so held.

Third, That the objecting creditors here are estopped by the acts of their trustee, Jackson, towit: an estoppel by judgment.

Fourth, That the objections by the objecting creditors here are a collateral attack upon a final judgment, which is res adjudicata of the facts and of the law. In support of our objection in respect to the law, we offer and refer to 28 U. S. Code, amended, 531, and the cases judiciously interpreting that section.

Fifth, That full faith and credit is under the law to be given by this Court to the final judgments and decrees of other District Courts of the United States, towit: Courts of equal jurisdiction of equal dignity. That the claimant M. E.

Heiser objects to the introduction of any evidence in support of any objection made by the bankrupt, or the trustee, or any other person on the ground that the record now shows that the matters involved in the Heiser claim, and the objections thereto are res adjudicata, that the objectors are estopped by the judgment, first, by the judgment in favor of Heiser and against the bankrupt, Woodruff, and Second by the judgment as *unsuffessfully* attacked and so held by the United States Circuit Court of Appeals in the Ninth Circuit in the matter entitled, Jackson, Trustee vs. Heiser, a certified copy of which is now in evidence; also on the ground that full faith and credit must be given by this Court to the final judgment of the United States District Court for the Southern *Distriset* of California, and the judgments and decrees of the Ninth Circuit in this matter; further on the ground that there is no authority in the bankrupt to object after his trustee has objected unsuccessfully; further on the ground that the present offer of proof by the objectors is a collateral attack upon a final judgment, as has been decreed by the Ninth Circuit, stated in the opinion of Judge Sam Bratton, as heretofore referred to and cited.

That this Court cannot attack the wisdom of a final
231 judgment of a Court having jurisdiction of the person and of the subject matter, which is res adjudicata and which is plead in this case. I would like to be heard in support of the objections before your Honor rules upon them. I think we are to a vital place in the case.

(And here arguments of counsel was heard by the Court.)

By Mr. Turnbull: Will it be stipulated that the various exhibits which have been offered, and which have not been read into the record, may be considered as a part of the record?

By Mr. Cases: Yes, sir, that is right as to all of them.

By Mr. Turnbull: I would like for your Honor to read the record.

By the Court: Very well. I want to read the cases cited, especially some of them, and I desire to look over the decisions of the Circuit Court of Appeals, that is on the question of res adjudicata. The other point would be a

question of *whither* the decision of the Circuit Court on the Trustee's petition, whether that would foreclose the matter being taken up further now. My opinion under the decisions read on the default judgment the bankruptcy Court can't go into the claim. I am going to recess until in the morning at 9:00 oclock.

(Whereupon Court recessed until in the morning at 9:00 o'clock.

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232 Thereafter and on the 16th day of November, 1940, at the hour of 9:00 o'clock A. M., the Court met pursuant to recess taken on yesterday, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

By the Court: I have studied the matters heretofore presented however I am not ready to rule on them; I did not have one of the decisions which I thought I had with me. On the question of res judicata it seems to me it comes down to this question, whether the action of the trustee in that Court and the appeal was res judicata, and on that point I am not decided, but I still have that matter before me. I think the trustee in this proceeding, I do not think that would be binding here offhanded, however I am not ruling on that, if that is res judicata we are bound by it, however I did not have this proceeding before me last night, and I don't know how far the decision goes.

By Mr. Fischl: Can we agree on what was done?

By Mr. Turnbull: The nature and character of it has been decided by the Circuit Court of Appeals, they decided that it was an independent action and so held, and if the Court please, I have introduced exhibits in this matter and they are now before the Court and Exhibit "N" is

232 a notice of motion to vacate judgment to set aside default, to vacate orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by P. M. Jackson, trustee in bankruptcy for Leonard J. Woodruff, and to allow the trustee in bankruptcy to intervene, that is one of the exhibits that has been introduced here, and that

was filed in the District Court of the United States for the Southern District of California, Central Division in case No. 7256-C wherein M. E. Heiser was plaintiff and Leonard Woodruff and others were defendants, and if the Court please I desire to call your attention to this exhibit No. "N" of M. E. Heiser, and also the District Court rules of civil procedure for the District Court of the United States, and I desire to read Rule 7, Title 3. (Which was read to the Court.) We have the order of the Court on the motion of Mr. Jackson and Mr. Woodruff and we have the ruling of the Circuit Court that that action constituted an independent action.

By Mr. Casey: What are you talking about, a motion made by the bankrupt?

By Mr. Turnbull: I am talking about the motion made by Mr. Jackson.

By Mr. Casey: There was no formal motion made
234 on behalf of Mr. Jackson, the trustee, all of that was by stipulation.

By Mr. Fischl: May it be stipulated that the entire proceeding was upon written documents that were filed in the case and there was no oral testimony taken.

By Mr. Turnbull: There was no oral evidence introduced other than the affidavits that are here, and the record there is here, and it was upon those instruments and the argument of counsel.

By Mr. Fischl: My suggestion was there was no oral evidence heard by the Court.

By Mr. Turnbull: It was presented by the motion and the affidavits that are now in evidence and there was no oral evidence.

By Mr. Fischl: I understood there was no oral testimony offered and I thought maybe we could stipulate that and get the judgment ruled upon.

By Mr. Turnbull: I have everything in the judgment roll here.

By Mr. Fischl: That is your opinion. If in checking the

judgment roll we find anything else in the judgment roll we want it understood we will be entitled to introduce it in evidence.

By Mr. Meyberg: If the Court please, if you ask the Clerk to give you the transcript of the judgment roll he gave you the documents.

By Mr. Fischl: In Oklahoma he certifies to the
235 judgment roll and enumerates the instruments filed.

By the Court: The rule of the District Court governing civil procedure say anything about the judgment roll.

By Mr. Turnbull: I don't know, the record which I have the orders of Judge Cosgrave recites that all the affidavits shall be made a part of the record.

By Mr. Casey: Who made that order?

By Mr. Turnbull: I said Judge Cosgrave made that order and I have all the motions and affidavits here, and they have been introduced in evidence. There was pending before your Honor last night an objection to an offer of proof which consists of a certified copy of an instrument which the Clerk of this Court of California designated as Exhibit "E", I believe, in the matter of Heiser vs. Woodruff, which exhibit appears in one of the other exhibits and appears in the minutes and it shows that was part of the evidence offered as to value in that case, and I say that is an attempt now to re-try the issues before this Court and which were before that Court and we say that is res judicata.

By the Court: I said awhile ago under that question of res judicata the question in point is what was decided there in that proceeding instituted in the Court by
236 the trustee to set that judgment aside. From reading this instrument here and from the opinion of the Circuit Court of Appeals, it appears to me that question there has been settled and I don't believe the bankruptcy court can go into that.

By Mr. Fischl: Your Honor finds that the District Court of the United States out in California heard this case on its merits and passed on the merits of the case, then there must have been a trial of the case. Under the ques-

tions raised there, and the affidavits attached to that case or filed in that case the Court in effect said when he refused to set that judgment aside, in effect the Court held there was no fraud shown and the judgment remained a valid judgment. Those two questions were not before your Honor, the question is whether or not there has been a hearing before a Court of proper jurisdiction on the controversy, and it was determined upon its merits, that is the question here. The trustee said he had a good defense and he was given an opportunity to present it.

By the Court: And the Court said that matter had been settled in the former hearing.

By Mr. Fischl: It never was heard at all, there never was a time when any evidence was heard by any
237 Court at any time upon the merits of this controversy.

By the Court: That is true as to that first judgment but after that judgment was rendered which was a default judgment then the trustee here brought an action to set that judgment aside and that makes this proceeding res judicata. September 26th, 1939, was when the order was made denying the trustee's motion to vacate the judgment. I don't think I want to hear any more on that at this time. I think this Court is bound by that, however I am not barring you from going into it later, under that opinion I don't see where it would avail anything, I do not believe we can go into that. I will sustain the objection of Mr. Heiser.

By Mr. Casey: Exception, if the Court please. If the Court please, I would like to make a statement or offer of proof, we are now ready and able and offer to prove that the plaintiff in this case has made the statement himself and also his duly authorized agent, and that is evidenced by the bill of lading heretofore offered in this case, that the value of the sapphires, zircons, opals, jades and so forth involved in this case, which was the basis of his claim, was of a value of $500.00 instead of $30,000.00, as determined by the Court in the judgment. We also
238 are able to present proof that personal property assessed for the purpose of taxation in the State of

California of these various so-called jewels, and originally involved in this action was the sum of $50.00 instead of that which the Court found to be their value. We are also prepared to prove that this very plaintiff filed a claim for this very same merchandise which he set forth had a value of $1.00 an ounce or $30,000.00 instead of the total of $164,000.00, he said at one time it was worth $30,000.00 and another time $99,000.00 and another time $164,000.00. That was filed in the District Court of the Southern District of California in 1928 or 1929 and in February he filed a claim for their value, February of '29 I believe it was and later in 1932 the plaintiff testified in that proceeding that the property, as he claimed involved in this proceeding was the value of $30,000.00, and we also offer the testimony of Mr. Smith that the merchandise involved herein was not worth the sum of $164,000.00, they are not worth it and never have been worth that sum or any other sum near that figure and also by the testimony of Mr.
239 Mabery to the same effect and Mr. Wood and also by the Sheriff's return of the State of California that the merchandise, which included the so-called sapphires, zircons, opals, and so forth did not bring any such sum: that he received some thirty-five sacks and one sack, containing 125 pounds sold to a third party, a stranger to this proceeding for the sum of $150.00, and therefore the thirty-five or thirty-six sacks, based on that figure, would be worth about $5,400.00 instead of the sum of $50,000.00 and we make that as an offer of proof.

By Mr. Turnbull: If the Court please, which is resented and objected to by the creditor Heiser for the reason the evidence purported to be offered is already in the case of Heiser vs. Woodruff and here it would be res judicata and would be an effort to re-try that case and in respect to other defenses, if any has been stated here, the Court has already heard evidence after the entry of judgment but not upon the default in the rendering of the judgment. Also to the alleged defenses of Woodruff with respect to which the Court heard evidence after the entry default, but not upon default in the rendering of the judgment.

240 By Mr. Casey: We are prepared to prove the defendant Heiser or the claimant Heiser, I should say, did not own the merchandise which is the basis of this claim, that prior to the filing of this action in 1935 he had sold and disposed of that merchandise, that the Statute of Limitation had long since passed and was a complete bar to his action which is the basis of this claim that he did not own the property and was not a proper party, as he was not the owner of the property which was the basis of that judgment, and the Court now knows from the evidence offered here, the title to that property failed.

By Mr. Potter: If the Court please, that offer of proof is made for all parties.

By Mr. Turnbull: The action of Mr. Casey in making this offer may be deemed made on behalf of all the opposing parties and need not be repeated.

By the Court: Very well.

By Mr. Turnbull: To the offer of proof the claimant Heiser resents the same and objects to the same on the ground that it is an attempt to again offer in evidence and receive evidence by the Court, or seeking to induce the Court or to get the Court to give further evidence in that matter, the merits of which are res judicata as shown by the exhibits heretofore offered by the claimant, Heiser, and
241 the record in this case shows that the Court did permit evidence to be introduced for some eight days and some of this evidence now offered was offered in that case, and it would be an attack, a collateral attack upon a final judgment and an attempt to re-try that case.

By Mr. Casey: In support of my statement, Mr. Turnbull did not state the fact that judgment had not been entered until after the motion was decided. This judgment, Exhibit "F" shows a judgment was entered the 20th of March, 1939, that judgment was never vacated or set aside and the motion to set aside that judgment upon default proceeded along up to the time the Court made its order the 8th of June, and this judgment during all of that time was a judgment, there never was but one judgment and that was the one dated the 20th of March.

By Mr. Turnbull: The default was entered and the Court then heard evidence and rendered the judgment.

By Mr. Casey: No, you are trying to hedge. He said these defendants had an opportunity to offer evidence and that is untrue, if the Court please.

242 By the Court: I am going to sustain an objection to all this line of testimony at this time, the offer of proof and so forth, and we are now going to adjourn until November 18th, 1940.

(Whereupon Court recessed until Monday, November 18th, 1940.)

Thereafter and on the 18th day of November, 1940, the above styled and entitled matter came on for further hearing herein, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

By the Court: How about the Heiser claim?

By Mr. Turnbull: We want to wait until tomorrow morning to make an announcement, if the Court please.

By the Court: That is all right, I sustained the objection to the offer of testimony on the theory that it is—that the judgment or the attack on the judgment would be res judicata. Now I say if you want to introduce your testimony you may do so under that general order No. 22.

By Mr. Fischl: We have tendered our proof and I don't believe it is necessary to put our testimony on and prove what was said, as they will testify to that. I take it that the Court considers the testimony we tendered as we
243 can prove what we offered referred to and what we have offered to show, do you consider it on that basis?

By the Court: Yes, I think so.

By Mr. Fischl: We will ask the Court now for permission to take the deposition of Mr. Cobb, attorney for the trustee in Los Angeles, and make it a part of this tender of proof.

By Mr. Turnbull: To which the claimant, Heiser, objects for the reason this matter has been set from August up to now and the deposition of Mr. Cobb could have been taken at any time from August up to now, and furthermore counsel has not offered to prove anything by Mr. Cobb.

By Mr. Fischl: We just want to take that deposition and make it a part of this record on appeal.

By Mr. Turnbull: There is no application here to take the deposition, no surprise has been stated or pleaded and counsel knew what the testimony would be.

By Mr. Fischl: We were surprised at the Court's ruling, we had no idea the Court would rule as he did.

By Mr. Turnbull: There is no such thing as a legal surprise.

By Mr. Fischl: It is part of our tender of proof.

By the Court: That will be all right.

By Mr. Turnbull: In the interest of an early decision in this matter, I offer at this time to stipulate a definite
244 time and place for the taking of the deposition of Mr. Cobb, and counsel can fix an early date and I will be there and waive all technicalities and agree that the deposition may be taken without notice, at a time and place to be agreed upon.

By Mr. Fischl: We will fix the date before this hearing in concluded. That will conclude our tender of proof. I have spent some time since the Court's ruling on this matter as to whether or not this is res judicata, I have spent some time searching the decisions and I have a decision here of the United States Court that it is not res judicata, I do not know whether your Honor desires to hear that or not, if so, I would like to present that tomorrow morning.

By the Court: All right, further hearing on this matter will go over until tomorrow morning.

(After which other matters were taken up before the Court.)

245 Thereafter and on the 22nd day of November, 1940, at the hour of 1:30 P. M., the following further proceedings were had regarding the Heiser claim as follows:

By Mr. Fischl: As part of our tender of proof at this time, we offer to prove on behalf of the objectors, or the objector and the various objecting creditors to the Heiser claim, we ask the Reporter to mark for identification as the objector's Exhibit "2", and we offer this Objector's Exhibit "2" as a tender and offer of proof, and we expect if the Court permits us to do so, to have the same identified by the witness, and to prove that it is a prospectus or whatever it might be called with reference to stock in the Golden State Gem Company of Nevada, that it was prepared by the defendant Heiser for distribution to the public, and was distributed by him and under his instructions to the public generally for the purpose of inducing people to buy stock in the Golden State Gem Company of Nevada.

By Mr. Turnbull: If the Court please, we would certainly object to that on the ground it is an attempt to re-try the issues in the Heiser case, in the case of Heiser vs. Leonard Woodruff, which resulted in the judgment relied upon by Heiser as a final judgment and which has been referred to so much and which has been attacked
246 collaterally and otherwise by the trustee and others, and we say that judgment is now a final judgment and its validity cannot now be attacked, and this character of proof is inadmissible in any Court.

By Mr. Fischl: This tender of proof is what we expect to prove, if the Court will permit us.

(And here argument of counsel was heard.)

By Mr. Fischl: If the Court please, I have had a letter marked Exhibit "3", and we expect to introduce evidence to show that letter was written by Heiser and that is his signature.

By Mr. Turnbull: To which offer of proof the judgment creditor Heiser resents and objects on the ground it is an attempt to collaterally attack the judgment in this case and upon which Heiser relies and is an attempt to collateral-

ly attack the decision of the Circuit Court of the Ninth Circuit, and its decision in this very case, and it now becomes res judicata here inasmuch as the Circuit Court of the Ninth Circuit said to Mr. Jackson that he had his day in Court by an independent equitable action.

247 By Mr. Fischl: As part of our tender of proof we offer as part of our proof the affidavit of Francis D. Cobb, as our Exhibit here and expect to prove the statement as contained in the affidavit as true and the facts are stated as in the affidavit.

By Mr. Turnbull: Does this have reference to the matter in regard to a deposition that you referred to heretofore, when you said you desired to take the deposition of Mr. Cobb?

By Mr. Fischl: No, that is part of our proof.

By Mr. Turnbull: This is not an affidavit that you ever used in California?

By Mr. Fischl: That is right.

By Mr. Turnbull: It is something new.

By Mr. Fischl: It is an affidavit as to what happened before Judge Cosgrave upon the presentation of the application of the trustee to intervene.

By Mr. Turnbull: If the Court please, we object to it, it is an attempt to offer in this proceeding a summary affidavit purported to have been sworn to before the commencing of this proceeding and it is hearsay as far as this claimant is concerned, and the person signing the affidavit is not present or subject to cross examination and does not come within General Rule 22, and under any guise this is not testimony. Then it purports to be an attempt by Cobb to impeach the records of the District Court of the United
248 States for the Southern District of California with respect to matters had in the case of Heiser vs. Woodruff, 2256-C, an attempt to impeach the exemplified records of that Court as to what occurred before that Court at that time. I take it I could not come in after you make a record and by affidavit contradict that record any more than Mr. Cobb could, that is not the best evidence and Mr. Cobb is

trying to tell this Court something happened different to what the record contains, and it is not admissible under General Order 22 as being evidence.

By the Court: The judgment roll in evidence here in the proceedings brought by Mr. Jackson?

By Mr. Fischl: Mr. Turnbull introduced certain instruments which he says is the entire judgment roll.

By Mr. Turnbull: And if the Court please, as far as I know it is.

By Mr. Fischl: First the gentleman does not know what he is talking about.

By Mr. Turnbull: I just understand enough to object to it.

By Mr. Fischl: I agree with you one hundred percent. This is an affidavit and we want it made a part of our record to show what happened.

249 By the Court: I will reserve my ruling on all of these offers at this time.

By Mr. Fischl: As a further tender of proof we offer in evidence Exhibits "5", "6", "7" and "8". These exhibits will show, if the Court please, what was before the Court in the case of Jackson vs. Heiser, they show the issues and the brief and what was really involved in the case.

By Mr. Turnbull: Who are you offering it for?

By Mr. Fischl: I am offering it for and on behalf of my client.

By Mr. Turnbull: To which offer and avowal of proof the claimant, Heiser, objects on the ground that the instrument is not certified. It is not an exemplified copy, is not subject to be used as proof in anything in this case at all, and we make the same objection to Exhibits "5", "6", "7" and "8", and is an attempt to impeach a final judgment of a Court of competent jurisdiction.

By Mr. Fischl: That is all the offer of proof we have. That is the proof we would desire to offer if we were given an opportunity to be heard.

(And here further argument was had.)

(Whereupon Court recessed until November 26th, 1940, at the hour of 9:00 o'clock A. M.)

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250 Thereafter and on the 26th day of November, 1940, at the hour of 9:00 o'clock A. M., Court met pursuant to recess heretofore taken, the parties hereto being present as heretofore shown after which the following further proceedings were had herein:

(And here arguments of counsel were heard by the Court.)

By Mr. Fischl: If the Court please, I object to his reading from the brief for the reason he objected to my reading from a brief unless it was introduced, and I object to it.

By Mr. Turnbull: I am reading from the brief, yes sir, a copy of the one that Mr. Fischl introduced or offered in evidence.

By the Court: Go ahead. I reserve my ruling on this matter at this time anyway. As I have stated here several times, the whole question on the point of res judicata, as against the trustee, is what was determined there at that hearing on the trustee's motion to vacate the judgment there in California, the whole judgment. In reading this opinion of the several suits and the affidavits and proceedings had thereon, it does not appear as far as the trustee's suit is concerned that any decision was had on the
251 merits. I take it under this Liten case, the Bankruptcy Court, even when a judgment has been entered against the bankrupt, the Bankruptcy Court has a right to go into the underlying claim and this judgment on which M. E. Heiser's claim is based was a default judgment. There was testimony taken afterwards on the question of the value of the gems, but the Court held that was not a final judgment rendered on June 29th, and after studying it over I believe my former ruling should be changed on the question of res judicata, and the objection will be overruled, Mr. Turnbull.

By Mr. Turnbull: The objection heretofore made by the

objector Heiser, wherein they attempt to impeach the judgment, that objection is now overruled?

By the Court: Yes.

By Mr. Turnbull: The various avowals of proof are made and in the event we are right, the record should be complete, counsel offered certain documents—

By Mr. Fischl: Doesn't that put us back where we have to offer proof?

By Mr. Turnbull: If the Court please, you said you would rule later and if it should be found we are correct,
252 and your Honor's original order is correct, you would still leave the record unruled on, on various things, there are six or eight offers acted upon.

By Mr. Fischl: That is true.

By Mr. Turnbull: These various offers or avowals are made and I want to withdraw my objection as to Exhibits "5", "6", "7" and "8" to the extent that the Court might examine those exhibits to determine as to the validity of the judgment, but not as to the facts therein stated.

By Mr. Fischl: We offered these exhibits for all purposes, he said he is willing now for the Court to consider Exhibits "5", "6", "7" and "8" for special reasons, or for specific purposes I should say, we think they are in for all purposes and they are so offered.

By Mr. Turnbull: To show what was before the Court, but due to the fact that the exhibits are not certified to, that is the reason we were not waiving further objection to the exhibits, only to show the Court what was before the Court in that matter. As to case 9359, Jackson vs. Heiser, counsel offered that part of the record together with the briefs and I originally objected to it for the reason it was not properly exemplified or certified for the reason there was no proper foundation laid for it, I think
253 that objection is good, but I think the Court should examine that instrument to see what was before the Court, but I stand on my objection and declaration otherwise. To the avowals and offers of proof as made by the

documentary proof offered by counsel, marked Exhibits "1" to "8", to all of those offered, both oral and documentary, the claimant Heiser objected on the ground it is an attempt to impeach the finality of a judgment, to-wit: the final order or judgment in the case of M. E. Heiser vs. Leonard Woodruff, and others, and the finality of the judgment in the case of Jackson vs. Heiser, No. 9356, in the Circuit Court of Appeals, the Ninth Circuit, and the other exhibits are an attempt to collaterally attack the judgment after it has been once or twice collaterally attacked and once by direct attack on each and every ground heretofore urged, with the additional objection as to objector's exhibits "5" to "8", that no foundation has been laid for their introduction and they are incompetent in this matter as no foundation has been laid. If they are overruled counsel can go ahead and prove his case.

By the Court: Overruled.

254 By Mr. Fischl: I presume it is necessary to first determine just how we will proceed on the Heiser claim. You know Mr. Casey and Mr. Filer were here from California for some week or more and they remained here until your Honor made the ruling heretofore, and they left with the request that they be permitted to be heard if your Honor changed his ruling. We have two witnesses from California, and they tell me they must leave today, and there is some documentary proof that your Honor would like to examine into on this Heiser matter, we are making those suggestions to your Honor, we are amenable to your Honor's suggestion.

By the Court: We will now recess until 1:30 o'clock today.

(Whereupon Court recessed until the hour of 1:30 o'clock.)

255 Thereafter and on the 26th day of November, 1940, at the hour of 1:30 o'clock P. M., Court met pursuant to recess taken for the noon hour, after which the following further proceedings were had herein:

By Mr. Turnbull: Do I understand, Mr. Fischl, you are now proceeding after the objections heretofore made have been overruled and under the new ruling of the Court you are now offering the proof in the Heiser claim?

By Mr. Fischl: That is right, and the offers of proof heretofore made are a nullity.

By Mr. Turnbull: Will it be stipulated that to all of this evidence offered that the same objections heretofore made as to any evidence which may be tendered or which may be deemed to have been made, in other words, the same objections heretofore made may be considered as made now when the testimony is offered?

By the Court: Yes.

By Mr. Turnbull: And if the same rulings are made we may have our objections thereto.

By the Court: Yes.

By Mr. Turnbull: And it is not necessary to repeat the objections to each question asked these witnesses or any other evidence which may be offered.

By the Court: That is right.

256 By Mr. Turnbull: As to that I will rest on it, however, I may have further objections as they come along, is that your understanding, Your Honor?

By the Court: Yes, that is right.

By Mr. Fischl: And whatever proof is offered by either objector inures to the benefit of the other objectors.

By the Court: Yes, that is my understanding, that is right.

(And here was offered part of the direct testimony of Walter Calvin Smith, who was examined by Mr. Fishl, who

stated to the Court that Mr. Smith had to return to California tonight, and the Court said, upon inquiry by Mr. Turnbull, as to any cross examination of said witness Smith: "If Mr. Smith does not return for cross examination at the proper time I will strike the testimony offered by Smith." Smith did not return, and the Court said: "That Walter Calvin Smith's testimony is not a part of the record and is not considered by the Court (This Referee) for the reason that Smith did not return for cross examination." Smith was only examined in part as to the Golden State Gem Company, as to its organization and its capital stock, shares, etc.)

(Court thereupon recessed.)

State of Oklahoma, County of Carter.

I, O. E. English, Court Reporter Twentieth Judicial District Court of Oklahoma, and the reporter who took the proceedings in shorthand during the hearings before
257 Judge Geo. F. Clark, Referee in Bankruptcy, in the matter of Leonard J. Woodruff, Bankrupt, No. 7623, on November 15th, 18th, 22nd and 26th, 1940, hereby certify that the within and foregoing is a true and correct transcription of my notes as taken on said days; that I took the proceedings in shorthand during the progress of said hearing, and thereafter transcribed the same, and that the above and foregoing is a true and correct copy thereof, and I do hereby so certify.

Witness my hand as such reporter this the 2nd day of August, 1944.

O. E. English, Court Reporter.

HEISER EXHIBITS.

[Exhibit A, proof of claim of M. E. Heiser, is identical with the proof of claim which appears at page 8.]

[Exhibit B, supplement to proof of claim of M. E. Heiser, is identical with the supplement to proof of claim which appears at page 11.]

[Heiser Exhibits C to T are Proceedings Composed of Complaint etc. Filed in Case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al. The Captions, Appearing on the Original Exhibits, are Therefore, Omitted from the Printed Record.]

[Exhibit C, complaint for damages, case No. 7256-C, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with exhibit B to the objections of Willie Mae Woodruff to the allowance of claim of M. E. Heiser, which appears at page 45.]

Heiser Exhibit D.

[Summons.]

The President of the United States of America.

To Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, Golden State Gem Company of California, a corporation, Golden State Gem Company of Nevada, a corporation, New Golden State Gem Company, et al. (Does)

Greeting:

You are hereby required to appear in an action brought against you by the above-named plaintiff in the District Court of the United States, in and for the Southern District

of California, Central Division, and to file your plea, answer, or demurrer to the complaint filed therein (a copy of which accompanies this summons), in the office of the Clerk of said County in the City of Los Angeles, County of Los Angeles, State of California, within twenty days after the service on you of this summons, or judgment by default will be taken against you, and you are hereby notified that unless you appear and plead, answer, or demur, as herein required, the plaintiff will take judgment for any money or damages demanded in the complaint as arising from contract or will apply to the Court for any further relief demanded in the complaint.

Witness, the Honorable Geo. Cosgrave Judge of the District Court of the United States in and for the Southern District of California, Central Division, this 21st day of April, in the year of our Lord one thousand nine hundred and Thirty-seven and of our Independence the one hundred and sixty-first.

R. S. ZIMMERMAN, Clerk,
(Seal) By L. B. FIGG, Deputy Clerk.

United States Marshal's Office, Southern District of California.

I hereby certify and return, that I received the within summons on the 31st day of January, 1939, and personally served the same on the 31st day of January, 1939, on Leonard Woodruff, by handing to and leaving a true and correct copy thereof, together with a copy of the complaint, with Mr. Woodruff, Jr., an adult person, who is a member or resident in the family of Leonard Woodruff, said defendant named therein, at the dwelling house and usual place of abode of said Leonard Woodruff, located at 2446 Inverness Street, City of Los Angeles, County of Los Angeles, in the said District.

ROBERT E. CLARK, U. S. Marshal.
By EDWARD L. FAUPEL, Deputy.

Los Angeles, California, February 3rd, 1939.

(Endorsed) Filed Feb. 9, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Certificate and Affidavit of Service.

State of California, County of Los Angeles, ss.

I hereby certify that I received the alias summons in the above entitled action on the 31st day of January, 1939, from the Office of the United States Marshal in the above entitled district and personally served the same on defendant Leonard Woodruff on the 31st day of January, 1939, by delivering to and leaving copy of the said writ and a copy of the complaint in the above entitled action attached thereto at his dwelling house at 2446 Inverness Avenue, Los Angeles, California, with some person of suitable age and discretion then residing therein, to-wit: The son of the said defendant, a man of about 23 years or more of age. That the facts of said service are as follows:.

On January 31, 1939, at approximately 6:30 P. M. I drove to the home of the said defendant herein, Leonard Woodruff, at 2446 Inverness Avenue, in Los Angeles, California, accompanied by J. Vic Wallen with whom I drove up the driveway onto the premises stopping my car in the compound near the garage. We then proceeded up a stairway to the level of the home making our way to a back door through which voices could be heard. After ringing the doorbell a man, whom I was informed and believe and therefore allege to be about 23 years or more of age, raised the inside curtain from inside the house and peered through the glass and screen doors and after seeing us opened the inner door, leaving the screen door fastened. I asked him if Mr. Leonard Woodruff, defendant in this action, was in and he replied that he was out of town and would not return home for several days. I asked him then if he was Mr. Leonard Woodruff's nephew and lived there and he said "No, I am his son." I then told him I had some papers I wished him to deliver to his father. I offered him a copy of the summons and complaint but he stated that he would not take them. I then thrust a copy of the summons and complaint through a large hole in the screen of the door with my left hand, at the same time displaying the original summons in my right hand, touched his folded right arm with the copy of the summons and complaint and he let them fall to the floor inside the house. I then told him I was a Deputy United

States Marshal and had been instructed by my superior to deliver to Mr. Leonard Woodruff or in his absence to leave copies of the summons and complaint in this action at his dwelling house with some person of suitable age and discretion then residing therein, and that I should like him to deliver them to his father, Mr. Leonard Woodruff. He replied that he would not do it; that he would burn them first and that he would see that his father would never see them. Whereupon I suggested that his plan would probably be an unwise procedure and that he should give them to his father, Leonard Woodruff, and then let him take whatever action he thought best. With this I said goodnight and we departed, leaving the said copy of the summons and complaint with the said party at the said house of the said defendant, Leonard Woodruff.

Dated February 18, 1939.

EDWARD L. FAUPEL,
Deputy United States Marshal.

Subscribed and sworn to before me this 18th day of February, 1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal)

State of California, County of Los Angeles, ss.

Edward L. Faupel, being by me first duly sworn, deposes and says: that he is the Deputy U. S. Marshal who served the summons and complaint in the above entitled matter, that he has read the foregoing certificate and affidavit of service and knows the contents thereof; and that the same is true of his own knowledge except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

EDWARD L. FAUPEL.

Subscribed and sworn to before me this 18th day of February, 1939. Paul Joseph, Notary Public in and for the County of Los Angeles, State of California. (Seal)

(Endorsed)

Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit E.

Affidavit.

State of California, County of Los Angeles, ss.

Comes now Leonard J. Meyberg, attorney of record for plaintiff herein, and being first duly sworn, deposes and says:

That no answer or reply in behalf of defendant Woodruff has been served upon him or his office, or the plaintiff in the above entitled action. Dated: February 21, 1939.

LEONARD J. MEYBERG.

Subscribed and sworn to before me this 21st day of February, 1939. A. W. Brunton, Notary Public in and for said County and State. (Seal).

(Endorsed): Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Praecipe.

To the Clerk of said Court:

Sir: Please enter default against defendant, Leonard Woodruff.

LEONARD J. MEYBERG,
Attorney for plaintiff.

Feb. 21, 1939

(Endorsed): Filed Feb. 21, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

[Entry of Default.]

In this action Leonard Woodruff having been duly and regularly served with process, and having failed to serve or file his plea, answer, or other defense in conformity with the requirements of the Summons, and the legal time for pleading or answering having expired, and no plea, answer, or other defense having been filed or served, now, on the written request of the plaintiff's attorney, filed in the case,

the Default of said Leonard Woodruff in the premises is hereby entered according to law.

Attest my hand and the seal of said District Court, this 23rd day of February A. D. 1939.

R. S. ZIMMERMAN, Clerk,
(Seal) By R. B. CLIFTON, Deputy Clerk.

[Exhibit F, judgment, is identical with exhibit A to proof of claim of M. E. Heiser, page 10.]

Heiser Exhibit G.

Notice of Motion to Set Aside Default and Default Judgment.

To the Plaintiff above named and Leonard J. Meyberg His Attorney:

You and Each of You will please take notice that on Monday the 10th day of April, 1939, at 10:00 A. M. of said day or as soon thereafter as said matter can be heard at the Courtroom of the Honorable Judge George Cosgrave in the New Federal Building, Temple, Main and Spring Streets, in the City of Los Angeles, County of Los Angeles, State of California, defendant Leonard Woodruff will move said Court for its order vacating and setting aside the default and the default judgment entered herein on the 20th day of March, 1939, and permitting defendant to file his answer herewith served.

That said motion will be made upon the following ground to-wit:

(1) That said default and default judgment were entered prematurely and without authority of law;

(2) That said default and default judgment were entered through the surprise of this defendant, his inadvertence, mistake and excusable neglect in that he was not actually notified that his son was served with process in this case until after the within default judgment was entered.

(3) That under the law when for any cause, process has not been personally served as in this case, the Court may allow such defendant, when justice demands, to answer to the merits of the original action.

Said motion will be based upon this Notice, the affidavit of defendant Leonard Woodruff, the further affidavit of Edward Fitzpatrick, one of the attorneys of record herein, and the affidavits of Howard Woodruff, Eugene Aycox and William De Vote, all of which affidavits are filed herewith, the verified answer of the defendant served herewith and upon all other records and files of the above entitled cause and the following other Court proceedings; Case #5587-J, United States District Court, Case #13393-J in Bankruptcy United States Court; Case #276469 in the Superior Court of Los Angeles County, State of California.

Dated this 27 day of March, 1939.

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for Defendant Leonard Woodruff.

Motion of Defendant Leonard Woodruff to Set Aside Default and Default Judgment.

To the Plaintiff above named and Leonard J. Meyberg, his Attorney:

Now comes defendant Leonard Woodruff, pursuant to Notice herewith attached, and moves the above entitled Court for an order vacating and setting aside the default and default judgment heretofore entered herein in favor of plaintiff and against this defendant on the 20th day of March, 1939, and permitting this defendant to file his answer herewith served upon the following grounds, to-wit:

(1) That said default and default judgment were entered prematurely and without authority of law.

(2) That said default and default judgment were entered through the surprise of this defendant, his inadvertence, mistake and excusable neglect in that he was not actually notified that his son was served with process in

this case until after the within default judgment was entered.

(3) That under the law when for any cause, process has not been personally served as in this case, the Court may allow such defendant, when justice demands, to answer to the merits of the original action.

(4) That in the furtherance of justice as evidenced by the affidavit supporting this motion, and the records and files of this case and other cases in the notice of motion referred to, defendant Leonard Woodruff ought to be allowed to file his verified answer herewith submitted and proceed to trial on the merits, a copy of which motion is herewith served upon you.

Dated: March 27, 1939.

AMES PETERSON,
EDWARD FITZPATRICK,
Attorneys for defendant Leonard Woodruff.

(Indorsed)

Received copy of the within ..... this 29 day of March, 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Mar. 29, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit H.

Affidavit of Attorney Robert L. Beveridge in Answer to References to Him in Plaintiff's Affidavit of Opposition to Defendant Leonard Woodruff's Motion to Set Aside Default and Default Judgment.

State of California, County of Los Angeles, ss.

Robert L. Beveridge upon oath deposes and says that he is an Attorney duly admitted to practice in the State Courts of California, and in the United States District Court of the Southern District of California, Central Division.

That certain statements concerning affiant have been called

to his attention as having been made in the affidavit of plaintiff in this action in connection with the opposition to defendant Leonard Woodruff's motion to set aside default and default judgment at pages 10, 11, 13, 14 and ending at line 2 on page 15 thereof.

That with reference to the truth or falsity of said statements, affiant deposes and says:

Denies that he ever had any conversation, directly or indirectly with defendant Leonard Woodruff with reference to the service of summons and complaint in this case; denies that he has acted as Attorney for Leonard Woodruff for the past several years or at all, or as Attorney for any of the other defendants except that when this action was first started, to-wit: Walter Calvin Smtih early in the month of July, 1935, employed him to enter his voluntary appearance in this action and file an answer when plaintiff withheld the service of process, in which respect, affiant states that nothing was done under said employment because plaintiff and his attorney refused to furnish affiant as said attorney with a copy of the eighteen page story-book complaint filed herein; that said employment was thus suspended until on or about the 10th day of March, 1939, when said affiant appeared herein as attorney for defendant Smith and moved for a dismissal of said cause as to defendant Smith under Section 581a Code of Civil Procedure for want of prosecution because plaintiff failed to make service or any effort to make service on this defendant within three years from the date of starting the action.

That with reference to the statements of plaintiff on page 13, 14 and 15 of his affidavit, same really being the write-up of his attorney Leonard J. Meyberg with regard to the withdrawal by this affiant of the file of the State Court case #....., this affiant alleges the true facts to be regarding the same:

At or about the time, namely April 16, 1932, this affiant was then acting as attorney for Hubert F. Laughran, Trustee in Bankruptcy of the bankrupt estate of Golden State Gem Company of California; that a hearing was then pending before Referee in Bankruptcy Earl E. Moss on an objection to the claim of plaintiff herein in the amount of

$30,250, which this plaintiff sought to have allowed against the assets of the said bankrupt estate; that in presenting proof showing that said claim was not a just claim, this affiant as attorney for said trustee had to take full responsibility for the safe keeping of said court record as it was needed as documentary evidence at said court hearing objecting to plaintiff's said claim; that this affiant knew that plaintiff or his attorney had previously withdrawn and attempted to secret said file themselves and place it where it could not be produced as documentary evidence at said court hearing before Referee Earl E. Moss, but the reason that they did not want it produced in court by this affiant and to cause so much trouble about it, and made all the innuendoes even at this late date, was because said court file #..... showed conclusively what happened to this plaintiff's gem material, being the same that he seeks to recover for herein, namely that title to it never vested in the bankrupt corporation as an asset, but was by plaintiff sold, transferred and consigned to the Golden State Gem Company of Nevada a different entity than the one in bankruptcy, and that subsequently thereafter through the court proceedings of said State case #..... had been levied against and sold at an execution sale as the property of the Golden State Gem Company of Nevada, and not as plaintiff's property, to partly satisfy a judgment recovered by Leonard Woodruff against said Nevada corporation and others.

That after proving up and having said claim disallowed, this affiant explained to Clerk L. E. Lampton that he had to use such extreme and precautionary measures for the safe keeping of said file until it was produced at said hearing, and was exonerated from any wrongdoing whatsoever, and in fact complimented for having the courage to invite the Sheriffs under court order to search his office and defy rules of general routine in the interest of seeing that justice was assured the real creditors of the bankrupt estate in a United States District Court proceeding, including defendant Leonard Woodruff.

As stated at line 21 of page 14, affiant denies that he communicated with Attorney Fitzpatrick in regards to any act or thing, or in regard to any proceeding whatsoever of this

case; denies that defendant Woodruff had anything to do with the motion of Walter Calvin Smith for dismissal herein or that the said motion had any connection whatsoever with any proceedings whatsoever involving the defendant Leonard Woodruff.

That with reference to the affidavit of Paul M. Joseph, affiant states that the papers referred to at line 13, page 2 of his affidavit had no connection whatsoever with anything this affiant was doing in this case other than as attorney for Defendant Walter Calvin Smith.

Affiant further denies that he had any telephone conversation in which the name of Woodruff was mentioned, or saying that the son of Woodruff was served, or that any telephone conversation whatsoever was had as alleged by Paul M. Joseph within the hearing of the said Paul M. Joseph by this affiant, but that if Paul M. Joseph had been so eavesdropping outside affiant's private office door, he certainly was having a "pipe-dream" as to what was being said by affiant over the telephone.

That affiant further deposes and says that he has learned that the papers in question were not received in the office of Leonard J. Meyberg the next morning as alleged by said Paul M. Joseph, namely the motion of Leonard Woodruff to set aside default and default judgment, together with supporting affidavits. As shown by the record herein, said papers were personally served by a representative from Mr. Peterson's office in the office of Leonard J. Meyberg and not as set forth in lines 20 to 29 in affidavit of Paul M. Joseph on page 3.

Affiant further deposes and says that in making misstatements as to facts, plaintiff and his counsel should at least check back as to the manner in which anything is claimed to have been done and the records won't be quite so bad against them.

Affiant further deposes and says that with reference to that part of plaintiff's affidavit alleging that he retained Robert L. Beveridge as his attorney, affiant admits that in the early part of 1935, prior to the filing of this complaint July 11, 1935, plaintiff consulted affiant as an attorney about

the facts of this action, but denies that he was ever employed by plaintiff for the reason that this affiant at said time and on a number of occasions since, had advised plaintiff that he did not believe, in view of all the circumstances, factual, legal, equitable and otherwise, he could under any conditions state a good cause of action against any of the defendants founded, among other things, on any of the allegations set forth in plaintiff's complaint.

Affiant further states that he had a conversation with another attorney with reference to said advice, at which time plaintiff offered $100.00 to affiant to prepare a complaint in spite of the fact that it was affiant's opinion that no cause of action would lie; that through said other attorney plaintiff promised to pay said $100.00 for the preparation of said complaint to affiant in the hope that even though no good cause of action could be stated, a proposition of settlement through affiant as his attorney would be forthcoming from one of the principal defendants who plaintiff stated at said time was financially responsible, namely Leonard Woodruff; that although the promise of said $100.00 was made, it never actually was paid, nor was said complaint prepared, nor said employment of affiant actually *consumated*; that said affiant does actually remember payment to him by plaintiff, in the presence of Walter Calvin Smith of the sum of $10.00 sometime in 1934 or the early part of 1935, when plaintiff was stopping either at the Alexandria Hotel or Hayward Hotel; said money having been paid in the Jewel Craft on Seventh Street near San Pedro, and a promise also having been made by plaintiff to present affiant with a rare specimen of his birthstone, namely, a large specially cut rare opal, at which time instructions were left with Walter Calvin Smith, a cutter, to mount the same and present to affiant; that said gift was never presented as promised and said $10.00 although it did not constitute payment in full for affiant's advice, closed any further relationship of attorney and client between this affiant as an attorney and plaintiff as client; that from that time to this day, plaintiff has never consulted affiant in any matter in connection with this case, but on numerous and diverse occasions as to the operations of plaintiff in this country, affiant has been consulted by the following persons:

Attorney Oscar Samuels, San Francisco, as attorney for Mrs. Lawler in the note case herein above referred to;

Peter J. Cribbin Investigator, department of Investment, Division of Corporations, State of California, 403. State Building, 217 West First Street, Los Angeles;

.....of the Bureau of Immigration Department, Federal Building, Los Angeles, and a number of attorneys and other persons who affiant does not remember.

That all of said persons inquired of affiant as to the merit, if any, of plaintiff's case pending herein, showing that plaintiff had been including the alleged claim herein as an item of value, giving it as financial reference and as an item of unfinished business, both to get a permit to sell stock in other corporate enterprises and to show alleged *justifable* reason for attending to unfinished business in the United States, namely this case, none of which, from the record appears thus far to have required the personal attendance or attention of plaintiff, but from the record appears to have been ably developed without anything actually being done by plaintiff personally, but only by his counsel and associate counsel as appears from the various petitions, affidavits and orders herein filed and by the Court issued.

Further affiant sayeth not.

ROBERT L. BEVERIDGE.

Subscribed and Sworn to before me this 19th day of April, 1939. Gyneth Riley (Seal). Notary Public in and for said County and State.

State of California, County of Los Angeles? ss.

Affidavit of Service on Attorney.

Edward Fitzpatrick being first duly sworn upon oath deposes and says; that he is one of the attorneys of record in the above entitled action for defendant, Leonard J. Woodruff; that on April 19th, 1939, he served on Leonard J. Meyberg the attorney for the plain..... in the above entitled action the *foegoing* affidavit of Leonard J. Woodruff, Robert L. Beveridge, Herman C. Woodruff, Jack Thomas, Edward D. Perkins, E. Poulson, Frank B. O'Connor, Seth Dixon,

W. C. O'Connor, Paul Metcalf, Gobel Zeimer, Marco Benveniste, Adolph Stack, by leaving copies thereof with Paul M. Joseph an associate of Leonard J. *Meyerberg* and delivering them to said Joseph at the office of said Attorney Meyberg room 403 Lane Mortgage Building, 8th and So. Spring sts. Los Angeles, California, at the hour of 4:50 O'clock P. M. Mr. Joseph being the person in charge thereof.

EDWARD FITZPATRICK.

Subscribed and sworn to before me this 20th day of April 1939. E. A. Loyd, Notary Public in and for the county of Los Angeles, State of California. (Seal).

(Indorsed).

Filed Apr. 20, 1939. R. S. Zimmerman, Clerk. By L. B. Figg, Deputy Clerk.

Heiser Exhibit I.

Reply in Opposition to Defendant Woodruff's Additional Points and Authorities on His Motion to Set Aside Default.

The only matter before this Honorable Court is a motion of defendant Leonard Woodruff to set aside a default and default judgment. When the said motion of said defendant Woodruff was called for hearing on April 10, 1939, Ames Peterson, Esq., one of the attorneys for said defendant Woodruff on said motion asked leave of this Honorable Court to file additional points and authorities on said motion, and this leave was granted him, allowing plaintiff an opportunity to answer the same. The minutes of this Court show that such order was made; a stipulation extending time to file such points and authorities was entered into at the request of said counsel for defendant Woodruff upon the claim of pressing business, and on April 19 defendant Woodruff served his additional points and authorities, but accompanying the same and in addition thereto said defendant Woodruff delivered to plaintiff at said time, twenty-two Affidavits in loose-leaf, unbacked form, purporting to be in support of defendant Woodruff's said motion. We submit that no authority to file additional affidavits was

granted, nor was any permission asked to file same at the time the motion was called for hearing or at any other time. Upon the filing of the additional points and authorities only, the matter was to be submitted.

On March 29, when the written motion of defendant Woodruff, and notice of said motion, were served and filed, certain affidavits accompanied the same in support thereof. No further papers were served or filed by said defendant in support of a motion at or prior to the time the motion was called for hearing. The request of Mr. Peterson, attorney for Mr. Woodruff, was merely to file additional written points and authorities and no mention was made of any additional affidavits. We submit that these affidavits constitute redundant, immaterial and insulting matter, irregularly filed without permission obtained therefor and could be only for the purpose of attempting to confuse this simple matter before this Court. We submit that the said affidavits filed in behalf of the said Leonard Woodruff after the hearing on April 10, should not be considered on this motion and should be stricken from the record, and that the motion should stand upon the papers originally filed and served in support thereof.

While entirely foreign to any issue before this Court, nevertheless because of the seriousness of the charge made by defendant Woodruff and his counsel, Beveridge and Fitzpatrick, and the complete falsity thereof, plaintiff's counsel feels that it is incumbent upon plaintiff to set up the facts under oath which will indicate to this Court the lack of equity existing as to defendant Woodruff and the length to which he is willing to go in his attempt to confuse the issue now before this Honorable Court.

In the affidavit of Attorney Robert L. Beveridge, served upon plaintiff's attorney April 19 in behalf of defendant Woodruff on this motion, it is stated that the plaintiff's presence in this country has been questioned by Immigration authorities and that plaintiff has used the pendency of the present action as an excuse to remain in these United States (page 6 of said affidavit). In the Second Affidavit of defendant Woodruff, served upon plaintiff's counsel on April 19, said defendant Woodruff swears on page 4, *line* 11, "the

facts being that plaintiff has merely used the pendency of this litigation according to positive knowledge of this defendant . . . . for the further purpose of over-staying his passport as an alien in this country, from time to time over a period of the last several years." In the serious charge made under oath by the said defendant Woodruff and the said Beveridge that plaintiff has deliberately used the pendency of this litigation according to their positive knowledge as a basis for over-staying his passport as an alien in this country from time to time over the last several years. These charges are of a serious nature and involve not only the plaintiff but the Government of these United States and the dignity of this Court, to the extent that plaintiff and his counsel feel that these charges cannot be permitted to go unanswered, even though plaintiff contends that such charges, together with all other allegations of the affidavits in which they are contained, are not properly before this Court upon this motion. For the purpose of refuting these false accusations the plaintiff submits herewith his affidavit denying the said charges *catagorically*, and setting up the facts as to his passport, his entry, and his presence in these United States. This affidavit of plaintiff M. E. Heiser is as follows:

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., Defendants. No. 7256-C.

Affidavit of M. E. Heiser.

State of California, County of Los Angeles, ss.

M. E. Heiser, being first duly sworn, deposes and says:

That he has read the Affidavit of Robert L. Beveridge filed in this action. That the said Robert L. Beveridge was employed by affiant and affiant stated his case to him as set forth in the affidavit of affiant on file herein. That said Beveridge at no time stated to affiant that this affiant had no case, but on the contrary informed affiant that his case against the said Woodruff was "iron-clad", and that there could be no defense to it. That affiant employed the said

Beveridge until such time as he was informed that the said Beveridge was in league with the said defendant Woodruff, after which he had no dealings with him. That affiant has never released any privilege or been asked so to do as between himself as client and the said Beveridge.

That affiant has read the affidavit of the said Beveridge to the effect that this action was filed to show alleged "justifiable reason for attending to unfinished business in the United States." Affiant states that the foregoing statement of the said Beveridge is false and untrue; that affiant's presence in the United States has never at any time been questioned by anyone, officially or otherwise, or by Governmental agent or otherwise; that affiant is the holder of Passport of the United Kingdoms of Great Britain, etc., No. 54270, issued to him at London, England, August 7, 1929; that said passport has been renewed and is valid until August 7, 1939; that the said passport carries Immigration Visa No. 7382 dated September 24, 1930, issued by J. E. Callahan, American Consul General at London, England, and shows the last arrival of affiant at New York December 24, 1936, upon presentation of Re-entry Permit No. 1068886 to the Immigration Inspector at New York; that affiant carries Immigration Identification Card, United States Department of Labor, No. 719432, issued at London, England by the American Consulate on September 24, 1930, which identifies the bearer of "Immigration Visa No. 7382" issued by said Consulate, and that the said identification card is duly signed by Immigration Inspector H. S. Manley at New York, his port of entry.

Affiant alleges that the said Beveridge has been fully informed as to affiant's status in the United States and that the said allegation in the said Affidavit of the said Beveridge that affiant filed this action to show alleged "justifiable reason for attending to unfinished business in the United States" is merely a dastardly attempt upon the part of the said Beveridge to embarrass and humiliate this affiant before this Honorable Court, but the said Beveridge has no basis or grounds whatever in truth or in fact upon which to base the said allegation.

That in the Affidavit of Leonard Woodruff, defendant

herein, on page 4 at line 11, said Woodruff swears as follows: "the facts being that plaintiff has merely used the pendency of this litigation, according to positive knowledge of this defendant, ... for the purpose of overstaying this passport, as an alien in this country, from time to time over a period of the last several years;" affiant states that the said allegation by the said defendant Leonard Woodruff is wholly false and untrue. Affiant denies specifically that he has at any time or in any manner or at all used the pendency of this litigation for the purpose of overstaying his passport, or for any purpose with reference thereto, or as an alien in this country from time to time or at any time or at all over a period of the last several years, or at any time or at all; affiant states that the said defendant Leonard Woodruff has no "positive" or other knowledge of the facts he alleges as aforesaid; denies that the said Leonard Woodruff has any basis whatever therefor in truth or in fact, and alleges that the said Leonard Woodruff made the said statement knowing, or having reason to know, that the same is wholly false and untrue and that the said Leonard Woodruff made the said false affidavit for the purpose of embarrassing and humiliating this affiant before this Honorable Court. Affiant states that this litigation has no connection whatsoever in any way, shape or form, nor has it ever been referred to in any way, shape or form in connection with his presence in the United States at any time, or at all.

That he did not know or learn of the existence of the file or record in Action No. 276469, Superior Court, Leonard Woodruff vs. Golden State Gem Co., et al., until after the file had been obtained by the Clerk of the Superior Court from the said Robert Beveridge. That immediately upon learning of the said file and record he caused his attorney to obtain a photostatic certified copy thereof from the Superior Court Clerk. That the statements otherwise under oath of the said Beveridge as they pertain to this plaintiff and the said file are wholly false and untrue.

M. E. Heiser.

Subscribed and sworn to before me this 17th day of May, 1939. Paul Joseph, Notary Public in and for said County and State. (Notarial Seal)

The defendant Woodruff served "Applicant's Points and Authorities" with the moving papers on this motion. In due course plaintiff served and filed his memorandum of points and authorities in answer thereto. We will not repeat the matter set forth in such memorandum which is already before the Court.

On April 19 plaintiff was served with defendant Woodruff's Additional Points and Authorities upon Motion to Set Aside Default. We agree with the first two points made in such brief; namely, "(A) Summons must be served as required by law to give court jurisdiction of the person."; and "(b) A judgment entered where summons not served, is not valid and court is without jurisdiction of the party." With these two points there can be no controversy whatever. It is apparent however that counsel for defendant Woodruff is either wholly unfamiliar with the new rules of Federal procedure because they cite California cases, and of the rules as existed prior to the present rules of Federal procedure, or the briefing of the issue in the manner they present has merely confused them. We disagree with the third point made in defendant Woodruff's Points and Authorities; namely, that there was no legal service of summons in this action, nor are their authorities in point.

The case of Doherty vs. Kalmbach, 87 Fed. (2d) 539, etc., is not in point as can be seen from the reading of even the excerpts therefrom cited in defendant's Points and Authorities at length. Defendant Woodruff's counsel devotes several pages to this citation and makes it the high point of their brief. However, that case decided a matter pertaining only to an "elisor" to the effect that while under the court rule of the District of Columbia where the case arose, the District Court might have appointed a private person to serve the summons in place of the Marshal of the District of Columbia. The Court, instead of simply appointing a private person, appointed an "elisor" and that an "elisor" was an officer unknown to the laws of the District of Columbia and the order of appointment therefore conferred no power upon the appointee to serve summons. The court, in reversing the order denying the motion to quash service of summons, expressly points out that under the court rule

a private person might have been appointed to serve the summons, but that the District Court had no power to create the office of "elisor" and implement such office with authority to serve summons in the absence of any law or rule. On page 2, 3, and 4 of defendant's Additional Points and Authorities the quotations from the Doherty case are taken from certain parts of the opinion illustrating the nature of the office of "elisor" and demonstrating that an "elisor" may be appointed only in case the marshal and the coroner are disqualified. This of course presents an entirely different situation which could not by any stretch of the imagination become pertinent to this issue before the Court.

The Marshal's office at all times had authority to serve the summons in our case, and such authority is conferred upon the United States Marshal by law and rule of court. Service was not made in our case by an "elisor" who the court in the Doherty case says may be appointed only in case the marshal and the coroner are disqualified. But the service in our case was by the constantly authorized process serving authority of this court and of the law; namely, the United States Marshal. Therefore the case of Doherty vs. Kalmbach, while no doubt good law for the very narrow point involved, is wholly meaningless for the issue for which it is used in defendant Woodruff's Additional Points and Authorities.

The remaining argument in the Additional Points and Authorities of defendant Woodruff is that the law of the State of California as developed under the statutory rule now embodied in the California Code of Civil Procedure, Section 473a, should be applied by this Court on this motion for the reason that the law of the state in which the District Court sits, to-wit, California, is the rule of decision in such Federal court.

Nothing could be farther from the true state of the law on this motion. Before going into the authorities cited by defendant, which we do later, we would respectfully call the Court's atention to the fact that the provisions of Section 473a of the California Code of Civil Procedure, which defendant Woodruff would have this Court consider to be

the law of this case, are not incorporated in Federal Rule of Civil Procedure No. 60 (b). The saving in rule 60 (b) of the remedy under the Judicial Code, Section 57, does not aid defendant for the reason that Section 57 applies only to actions involving liens on, or claims to, real or personal property within the jurisdiction where the defendant sought to be served is a non-resident or cannot be found. Our case at bar is an action for money damages for conversion of personal property and does not involve a lien upon or claim to such property. Thus, it may be seen definitely that Judicial Code, Section 57, does not apply, *nor does* defendant Woodruff purport to follow the procedure laid down by that section.

We submit that on the moving papers before this Court the defendant Woodruff makes no showing whatever in support of his motion save an attempt to show a meritorious defense and his alleged lack of the knowledge of the service of the summons until February 27, 1939. From the Affidavit of Leonard Woodruff, sworn to before Robert L. Beveridge, dated March 27, 1939, and filed herein to support this motion, the said defendant, Leonard Woodruff, swears on page 1, lines 14½ to 16½:

"That At No Time Did He Have Knowledge That a Summons Was Alleged to Have Been Served On Him Until February 27, 1939, On Which Date He Learned That His Default Had Been Entered."

Said defendant Leonard Woodruff further states in the same affidavit on page 1, lines 23 to 27:

"That affiant was absent from the said residence from on or about January 7, 1939 until February 26 or 27, 1939, when he returned to attend his younger son's birthday dinner on February 28, 1939; that defendant did not have knowledge that a summons or copy of a complaint in this action had been left at No. 2446 Inverness Avenue until February 27, 1939"

These two excerpts are from the Affidavit of the defendant, Leonard Woodruff, and sworn to before Attorney Robert L. Beveridge as Notary and dated March 27, 1939, and

served with defendant Woodruff's motion herein to support the same.

Now, under the rules of this Court defendant Woodruff has twenty days within which to appear after service. Had the defendant Woodruff been served with summons on February 27, which is the date upon which he swears he had knowledge of the service of the said summons, he would have been required to answer twenty days thereafter, or not later than March 20, 1939. No attempt was made by the said defendant Woodruff to answer or to obtain any order extending time to answer, or to vacate the default, until the present motion was filed on April 9, 1939, nor was the default judgment until after hearing by the Court on March 20, 1939. So defendant Woodruff waited for a longer time to move to vacate the default than he was allowed within which to appear, even assuming that February 27, when he admits in his Affidavit he learned of the service, had been the date of service rather than January 31, the date when the service was actually made by the United States Marshal. But, in reality, we submit this defendant Woodruff did do something in the meantime. On March 9, 1939, defendant Walter Calvin Smith, who is charged in the complaint herein as one of the conspirators with defendant Woodruff, moved through Attorney Robert L. Beveridge for a dismissal of this action. The verification of the affidavits of Robert L. Beveridge, and of Walter Calvin Smith taken before the said Robert L. Beveridge, bear the same date, March 9, 1939. This was within ten days after Defendant Woodruff admits by his affidavit that he learned of the service upon him.

This same Attorney Beveridge disavows any connection as an attorney with defendant Woodruff. Nevertheless, this same Mr. Beveridge is the Notary Public on three of the affidavits of the defendant Leonard Woodruff filed in support of this present motion of defendant Leonard Woodruff, and upon the affidavit of Howard L. Woodruff, the son, not to mention that the same Mr. Beveridge as Notary Public took the actual verification of defendant Woodruff on his proposed answer submitted with this motion. We submit that Mr. Beveridge has been too closely connected with defendant Woodruff from before the time of the commencement of this

action, and that some tactical advantage for defendant Woodruff was sought by the motion made on behalf of defendant Smith by the said Mr. Beveridge. Smith had never taken any part in this action before the said motion was presented on his behalf by Mr. Beveridge. The closeness in time of the nascent interest of Smith in this action to the service of process upon Mr. Woodruff is hardly a coincidence with Attorney Beveridge in the background.

The other attorney for defendant Woodruff herein is Mr. Edward Fitzpatrick, and who, we will show later in this memorandum, has represented defendant Woodruff in dozens of cases in many litigated matters for many years throughout the Municipal, Superior, Appellate and District Courts of this community wherein we submit defendant Woodruff is a chief litigant. Mr. Edward Fitzpatrick has filed affidavits in support of this motion in which he shows a very personal interest in this action, and it appears that this same Edward Fitzpatrick was the Notary on the service of the original action in the Superior Court of this County wherein the said defendant Woodruff committed tortious act of conversion of this plaintiff's property, which is the subject of the present suit. We repeat from the original affidavit of M. E. Heiser on file herein in opposition to this motion of defendant Woodruff, the following excerpts, none of which have been denied by the said defendant Woodruff or by the said Edward Fitzpatrick; though their statements as to many other matters have been quite prolific, they noticeably disregard this:

"That after said cause of action arose said Fitzpatrick has conspired with defendants herein to defeat the rights of affiant as plaintiff herein . . . . that Fitzpatrick has no personal knowledge whatsoever of any of the acts or things alleged in the complaint and has misstated the facts in this action . . . . and any and all 'knowledge' thereof is *heresay* and has been gotten by said Fitzpatrick from defendants and the attorneys, or from third parties, and none of said information has come from contact with affiant or his attorney of record herein . . . . that the said Beveridge and Fitzpatrick have been familiar with this case ever since it commenced; that affiant has been informed by a clerk in the office of the clerk of the United States District Court

that the said Edward Fitzpatrick has frequently and regularly come into the office of the clerk of this court since the commencement of this action, and has requested the file in this action before this Honorable Court, and has obtained the same, and has from time to time examined the same, and has familiarized himself therewith, and that said Fitzpatrick has stated that the plaintiff would never be able to serve the said Woodruff because he was smart enough to evade the same and then wear the plaintiff out . . . . that the said Edward Fitzpatrick has represented the said defendant Woodruff in this action at all times since the commencement thereof, and has on various and numerous occasions conferred with him about the same."

Now, peculiarly enough, and defendant Woodruff would have this Court believe it was a coincidence, the notice of motion in this action by defendant Woodruff, which is now before the Court, is dated March 27, the same day upon which the Minute Order of this Honorable Court shows that an order was made denying the motion to dismiss of defendant Smith.

We submit that the defendants did not seasonably move to set aside the default entered herein on March 20, but, instead, attempted through the defendant Smith on March 9 to gain an advantage, and only when Mr. Smith's motion was unsuccessful and the Court ruled thereon on March 27 did the defendant Woodruff make the present motion to open the default. The affidavits submitted on this motion by defendant Woodruff show nothing whatever to explain the negligent delay of defendant Woodruff, or the willful conduct in attempting to move through the said defendant Smith, whichever view the Court may take of the situation.

The plaintiff herein has been most diligent in attempting to cause the summons and complaint herein to be served upon the defendant Leonard Woodruff. The record shows that the United States Marshal received the complaint and summons herein for service upon defendant Leonard Woodruff the day after the filing of the complaint, and the same remained with the United States Marshal for service with every effort being exerted by plaintiff through his counsel, and by the United States Marshal's office to make service from that very day to the date service was actually made

herein, to-wit, January 31, 1939. This is only one phase of plaintiff's activities which is summarized in the statements, certificates and affidavits of Chief Civil Deputy United States Marshal Clarence G. Mertz and Deputy United States Marshal Frank L. Besser for the return on the summons herein by affidavit of Deputy United States Marshal Edward Faupel. For the convenience of the Court a photostatic copy of the verified statement and certificate of Chief Civil Deputy United States Marshal Clarence G. Mertz and Deputy United States Marshal Frank L. Besser are annexed hereto, together with a copy of the affidavit of Deputy United States Marshal Frank L. Besser, and the return of service of Deputy United States Marshal Edward Faupel. Page 15. We respectfully urge this Honorable Court to carefully consider these certificates and affidavits. The allegations and statements contained therein are by important officers of this very court, wholly disinterested in this action or the parties thereto. These copies are appended to this page.

Against such completely disinterested showing the defendant Woodruff produces a series of scandalous, impertinent and controversial affidavits in an unquestionable attempt to undermine the reputation of plaintiff and to cast uncalled-for doubt and suspicion upon plaintiff's integrity, and even the integrity of officers of this court, of the United States Marshal, and counsel representing the plaintiff. We submit that many false issues have been raised in the papers upon which the defendant Woodruff relies on this motion.

The issue is, in reality, extremely simple and is to be decided in the sound discretion of this Court. The question is solely and only whether or not showing of surprise, inadvertence, inexcusable neglect has been made by defendant Woodruff. We respectfully submit that in the case made under the law no such excuse has been presented and no foundation laid therefor by defendant Woodruff, and the entire proceeding to set aside the default and the default judgment regularly and properly entered herein is an impertinent attempt by one who might be termed a professional litigant and who has evaded the very process of this court and jeered at its dignity, and its officers to gain an advantage in no way contemplated by Rule 60 (b), which provides a means for giving relief to meritorious litigants who find

themselves in distress through no fault of their own and who can lay themselves upon the mercy of the court by a showing that entitles them to such equity.

It is interesting to note that in none of the voluminous papers filed by defendant Woodruff is anything whatever said to indicate what became of the summons and complaint, admittedly served upon Mr. Aycox by Mr. Bellows on January 28, 1939, or what became of similar papers admittedly served upon Howard L. Woodruff, the defendant Woodruff's son, a person of suitable age and discretion who admittedly then resided at the dwellinghouse and usual place of abode of defendant Woodruff, on January 31, 1939. Though defendant Woodruff alleges in his affidavit, as we have noted, that he first learned of the service of the summons on February 27, 1939, his only explanation of this delay, is that from early in January until late in February, namely, February 26 or 27, he was away from his usual residence, staying at the residence of William DeVoto in the City of Los Angeles, and with Mr. DeVoto was busying himself during this time considering the opening of a new business. No reason is even suggested by defendant Woodruff why, during all of this time, he did not call his residence by 'phone, or see or talk to his wife, or contact anyone at his residence and usual place of abode. Defendant Woodruff merely makes the claim in his affidavit that he did not learn of the service until February 27 (page 1, lines 14 to 16 of his Affidavit dated March 27, 1939, and page 1, lines 23 to 27), but no place does he explain or offer any excuse for this delay of a month from February 27, 1939, when he first learned of the service, until March 27, 1939, when he made his first move or appearance in his own name in this action, though we submit that he did take a chance that this Court would dismiss this case through the motion which was denied on March 27, filed by Attorney Beveridge in behalf of defendant Smith.

Under the California Code of Civil Procedure, Section 473a, where no personal service is made upon the defendant, such unserved defendant, within one year, may move to set aside a default entered against him upon showing a meritorious defense or other excuses in Section 473a, under which latter Section naturally both a meritorious defense and a

statutory excuse must be shown. Save for the remedy under Judicial Code, Section 57, which, as we have shown, is inapplicable here, Rule 60 (b) is substantially the same as California Code of Civil Procedure 473: namely, a statutory excuse must be shown. Section 473a of the California Code is not included in the new rules of civil procedure. It is simple to distinguish between the cases decided under the statute now embodied in Section 473a of the California Code of Civil Procedure which defendant would ask the Court to consider, but which are not in point, and the cases decided in the rule now embodied under Section 473 of that Code which has been incorporated in the Federal Rule of Civil Procedure No. 60 (b) and is the law and rule under which this Court will decide this question.

Prior to the promulgation of the new Rules of Federal Procedure, whatever belonged to practice and forms and modes of proceedings was controlled by the Conformity Act (Amy v. Watertown, 130 U. S. 304). In the absence of Federal statute or court rule the State law was followed with regard to the mode and manner of service. (Swarts v. Christie Grain & Stock Company, 166 Fed. 338.)

The purpose of the adoption of the new Rules of Federal Procedure was to abolish the practices that had grown up under the Conformity Act and it is obvious that such effect has been obtained, at least in a law action. (Rule 1; Rule 81; 1 Moore Fed. Prac. Under The New Rules, 35 and 36.)

Rule 4c provides that service may be made by the Marshal or one specially appointed to make the service. It has always been the law that it is one of the Marshal's duties to serve all process issued out of the District Court placed in his hands for service and appearing to be legal. (Lovering v. U. S., 117 Fed. 565.) The appointment of Daniels to serve the summons and complaint in this case was permissive only, and was supplementary authority not depriving the Marshal of his underlying authority. Therefore, we submit that a proper person, to-wit, the Deputy United States Marshal Edward Faupel, served the summons. It would be bordering upon the ridiculous to adopt defendant's strained theory otherwise.

We submit that counsel for defendant Woodruff is grossly

mistaken in their suggestion that the service had in the case at bar was something different from personal service. The Federal Rules of Civil Procedure, Rule 4d, provides as follows:

"Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Service shall be made as follows:

"(1) Upon an individual other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

Now, the service of the summons and complaint herein was made on January 31, 1939, by Edward Faupel, Deputy United States Marshal, and the return of the United States Marshal is attached to the summons filed February 9, 1939, in this court. We quote it in full as follows:

"United States Marshal's Office
Southern District of California

I hereby certify and return, that I received the within Summons on the 31st day of January, 1939 and personally served the same on the 31st day of January, 1939, on Leonard Woodruff, by handing to and leaving a true and correct copy thereof, together with copy of the complaint, with Mr. Woodruff, Jr., an adult person, who is a member or resident in the family of Leonard Woodruff, said defendant named therein, at the dwelling house and usual place of abode of said Leonard Woodruff, located at 2446 Inverness Street, City of Los Angeles, County of Los Angeles, in said District

ROBERT E. CLARK, U. S. Marshal.
By EDWARD L. FAUPEL, Deputy

Los Angeles, California, February 3, 1939."

Defendant Woodruff admits that 2446 Inverness Street is his dwelling house and usual place of abode and that the

complaint and summons were served on his son, Howard L. Woodruff, on January 31, 1939, by the said Edward Faupel, Deputy United States Marshal, and it is not denied that said Howard L. Woodruff is of suitable age and discretion residing at said dwelling house. This spells out a complete service on January 31, 1939, by the United States Marshal in this action, and we submit that under the Federal Rules of Civil Procedure, Section 4d, which deals with service of summons, this is personal service of summons as stated in the Federal Rule. The manner of service was proper and conferred jurisdiction over the person of the defendant. Rule 4d provides the manner in which personal service of summons shall be made. About thirty of our states have long since provided for service of summons by leaving a copy of the summons with the defendant personally or at his residence or usual place of abode with some member of the household of suitable age and discretion. This, no doubt, is the basis for Rule 4d of the New Rules of Federal Procedure. These statutes and the decisions under them are set forth in the 1938 Supplement to Edmund's on Federal Practice in the Annotations to Rule 4:

"Service of process by leaving a copy at the usual place of residence of the defendant within the district is personal service." (Knowles v. Gaslight & Coke Co. (U. S. 1873) 19 Wall. 58; Bickerdike v. Allen, 157 Ill. 95; Hamill v. Talbott, 72 Mo. App. 22; Hass v. Leverton, 128 Iowa 79.)

When the statute provides for service of summons by leaving a copy at the residence with a specified person, the fact that the defendant is not at the usual place of his residence, or where he generally lodges at the time he is served does not invalidate the service even though such defendant does not find that the suit has been filed until some time later and after a judgment by default has been obtained by the plaintiff (Venable v. Long Realty Co., 46 GA. App. 803; Galvin v. Dailey, 109 Iowa 332; In re Estate of McCormick, 260 Ill. App. 36.).

Now, defendant Leonard Woodruff, as we have shown in his affidavit, admits that he learned of the service herein of the complaint and summons on February 27, 1939, page 1, lines 14 to 16, and lines 23 to 27, of his Affidavit, by filing

a notice of motion on March 27, a month later, setting a hearing for April 10 on his motion, we submit is not timely made.

Where a substituted service is allowed by statute or rule a motion to open a default judgment, even though seasonably made, will be denied in the absence of a showing that the person served paid attention to the summons notwithstanding that a meritorious defense is shown in the moving papers (Giles v. Grady and Neary Ink Co., 284 Ill. App. 651.).

"A party who has knowledge of the judgment against him is required to exercise reasonable diligence in seeking to have it set aside, and his unexcused delay in the application, amounting to laches, will justify the court in refusing the relief asked. (Smith v. Jones, 174 Cal. 513; Glougie v. Glougie, 174 Cal. 126; Edwards v. Hellings, 103 Cal. 204.)" 34 Corpus Juris 216.

The case of Orschelm v. Scott, 79 Mo. App. 534, is referred to at length in the Additional Points and Authorities of Defendant. We have found two cases to show the manner in which the Missouri courts actually handle a situation such as confronts us. In Colter v. Luke (1907) 129 Mo. App. 702, on a motion to open a default, it was shown that the defendant was served by a copy of the summons being left at his residence and, while the defendant actually received the summons in time to make his answer, he did not assert his defense in any pleading until he set it up in an affidavit of merits on his motion to vacate the default. The Court said at page 707:

"Plaintiff who has been diligent has some rights which must be respected. He went to the trouble and expense of preparing for trial and appearing at the appointed time and place with his witness and obtained his judgment as the result of the orderly pursuit of the course of procedure prescribed by law. To set aside the judgment would be to punish him for the inexcusable neglect of his adversary.

"A defendant against whom judgment goes by default should not be made an object of solicitude upon the part of the court on the mere showing that he has a meritorious

defense. He further must show that he has not been neglectful of his own interests and that his failure to appear was due to a cause which would have misled any reasonably prudent and diligent person in his situation."

In the last case referred to the defendant actually received the summons in time to plead before the default was entered. In Mattocks v. Van Asmus, 180 Mo. App. 404 (1914) service was made upon the defendant by leaving copies at the usual place of abode with a person over 15 years of age, as provided by the Statute. Defendant first learned of the action after his default and the default judgment against him was entered. The Statute provides that any defendant "who has not been summoned" might have such judgment set aside on a showing of "good cause."

"It is fundamental, of course, that the court hearing a motion to vacate a default has a wide discretion and an appellate court will not interfere with the exercise of such discretion in the absence of clear abuse." (Brooks v. Nelson (1928) 95 Cal. App. 144; Weck v. Sucher (1929) 96 Cal. App. 422.)

The California courts have applied California Code of Civil Procedure, Section 473, with liberality, but in addition to a showing of a meritorious defense, one of the statutory excuses must appear. A mere showing of a good defense on the merits will not serve as a basis for setting aside the default. To set a default aside under Section 473 without one of the statutory grounds appearing, is an abuse of discretion.

Bailey v. Taafe, 29 Cal. 423.
Dunn v. Standard Accident Co., 114 Cal. App. 208.

"It is incumbent upon the defendant to assert his defense by a pleading within the statutory time for appearance: if he does not do so and his default is taken he must show some grounds mentioned in Section 473 as an excuse in addition to a defense."

Guire v. Drew, 83 Cal. 225.
Grey v. Milligan, 101 Cal. App. 328.
Sharp v. Paulson, 111 Cal. App. 515.

"The defendant must be diligent in presenting a motion to open the default. Laches will bar relief even though the defense on the merits plus a statutory excuse appears.

Smith v. Pelton Waterwheel Co., 151 Cal. 394.
Massimo v. Taranto, 108 Cal. App. 693.
Turner v. Frost, 51 Cal. App. 196.

Finally, if in its discretion a court determines that relief should be granted and that the statutory excuse appears therefor, then upon granting relief as is said in 34 Corpus Juris, 380:

"It is usually proper for the court to impose as a condition of opening a judgment, a requirement that defendant shall pay the accrued costs in the action (many cases cited), and also in a proper case and where justice requires it the disbursements of the opposite party (many cases cited) for reasonable personal expenses incurred in connection with suit, a proper fee for his attorneys (many cases cited) and the costs of the motion itself (many cases cited)."

Imposing as a condition for relief that plaintiff's costs be paid is proper.

Heermann v. Sawyer, 48 Cal. 562.
Watson v. San Francisco, etc. Co. 41 Cal. 17.

In Sheffler v. Hutchings, 124 Cal. App. 760, the condition that a surety bond be filed to guarantee the judgment, costs and an attorney's fee if plaintiff prevailed, was held to be proper.

Defendant Woodruff suggests in his brief that this court in designating some individual as a proper person to serve a copy of the complaint and summons, was, in effect, to deprive the United States Marshal of such right. We submit that this is wholly without merit. The authority of the United States Marshal and his deputies existed by law and rule of this court before any person was specifically appointed by the court for that purpose and necessarily continued throughout from the commencement of the action to the end. The rule is his authority therefor in plain language. The appointment by the court of some individual as a proper person was at most supplemental authority that would not deprive the United States Marshal or his deputies of the

underlying authority. In defendant Woodruff's counsel's own authority in the case of Doherty v. Kalmbach, 87 Fed. (2d) 539, which he quotes at length, it may be seen that the United States Marshal at all times would have a right to make service of this process because, as the court said, the lower court in said case had no authority to create the office of "elisor" and implement such office with power to serve process, so, this Honorable Court, we respectfully submit, would have no authority to deprive the Marshal of this District, and his deputies, of his statutory authority to serve process. It has been the law that the Marshal's duty to serve all process placed in his hands for service and appearing to be regular, and so long as he holds office this duty cannot be denied him. (Lovering v. U. S., 17 Fed. 565.)

To take a cognate situation, California Civil Code provides:

"The summons may be served by the Sheriff of the county where the defendant is found, or by any other person over the age of 18 not a party to the action."

Could it be argued that when "any other person" attempts to make the service then the Sheriff of the county is without power to make similar attempt, and if the Sheriff succeeds where "any other person" does not, is the Sheriff's success nullified by the supplemental authority in "any other person"? An affirmative answer would be ridiculous and we submit that Rule 4 (c) of F. R. C. P. removes any doubt as far as the service of process of this court by the United States Marshal is concerned. The cases cited and quoted from Point "C" in defendant Woodruff's brief do not demonstrate in any manner that the service in this case made by Deputy United States Marshal Faupel was a service by an unauthorized person, the United States Marshal having at all times authority to make service, and such authority could not be taken away by designation by the court of some individual as a proper person to serve.

It is interesting to note that in none of the papers filed on behalf of defendant Woodruff is anything said to indicate what became of the summons and complaint admittedly served on January 26, 1939, or what became of similar papers admittedly served upon Mr. Woodruff's son on Jan-

uary 31, 1939. Apparently Mr. Woodruff and his counsel do not care to be positive on this matter or to mention it. But Mr. Woodruff is positive in his affidavit dated March 27, 1939, on page 1, line 14, filed in support of this motion, "that at no time did he have knowledge that a summons was alleged to have been served on him until February 27, 1939, on which date he learned his default had been entered in the above entitled action on February 23, 1939." But defendant Woodruff admittedly did nothing until this present motion was filed in his behalf on March 27, 1939, though in Mr. Calvin Smith's behalf Attorney Beveridge did file on March 9, 1939, a motion to dismiss in behalf of defendant Smith, and Attorney Beveridge did file an affidavit herein to support Mr. Woodruff, in which he accuses attorney's for the plaintiff, and plaintiff of bad faith, and plaintiff of using this case to remain in this country, wholly falsely, and he further proffers under oath, statements which he "admits" were made to him by plaintiff herein at a time when he admittedly was representing plaintiff as his counsel in this very action. By his own admission in his affidavit such statements were privileged at best and such privilege was not released, and yet Attorney Beveridge is the notary public on three of Mr. Woodruff's affidavits filed herein and on the affidavit of Mr. Woodruff's son, not to mention that he also took the verification in the supporting answer submitted with this motion. The affidavit of L. E. Lampton, Clerk of the Superior Court of Los Angeles County for twenty years, attached hereto, states on page 3 thereof, line 11: That said statement of said Robert L. Beveridge in his affidavit insofar as it refers to L. E. Lampton, affiant herein, is false and untrue." The affidavit of plaintiff attached hereto shows exactly how he is in the country and proves conclusively the falsity of Attorney Beveridge's allegation. There is nothing equivocal about all this. Surely a defendant against whom judgment goes by default should not be made an object of solicitude on the part of the court on the mere showing that he believes he has a meritorious defense. He must further show that he has not been neglectful of his own interest and that his failure to appear was due to a cause which would have misled any reasonably prudent and diligent person in his situation, as is shown by the affidavit of Mr. Joseph, attached hereto, setting up the record in the

County courts at Los Angeles. Mr. Leonard Woodruff, defendant herein, was, and is, we submit, the chief professional litigant of the community and stands so charged before this court.

We submit that from the facts before this Court, defendant Woodruff virtually says to this Honorable Court:

"Yes, I did everything I could to evade service and to keep the United States Marshal and any other person from reaching me with service. I kept my attorney, Edward Fitzpatrick, constantly watching this record in the United States Clerk's office. Yes, everyone knows that I am an expert at evading service. If you want proof look in the records of the cases in the Superior Court. Why, I even dodged the United States Revenue officers for years so that they could not make me file an income tax return. I admit that the United States Marshal served this summons at my residence and usual place of abode in a manner according to law: He delivered it to my son who was of suitable age and discretion who lives there with me, and who said that he would burn it and not tell me about it, and I am not going to tell you what happened to the papers, but, ah! I was away; I was not at home; I was at a friend's house in Los Angeles where I remained for a month after the service and did not even communicate with my house or my son or my wife during that time, and more, though I admit the complaint was served on January 31, I did not learn about it until February 27, but I did nothing, not me.

"It is true that nine days later defendant Smith, through Attorney Beveridge, moved to dismiss, but, no, no, that didn't have anything to do with me. It is true that I knew that on February 23 default was entered against me but I still did nothing. I knew that my answer was due twenty days after the complaint was served. I knew that the answer was due February 20. I knew that on March 20 the default judgment was taken but I still did nothing. I knew on March 27 this Court denied the motion of Smith and on that day, March 27, I moved to set aside this default judgment, but not until then. I accused everybody in this case, including the plaintiff and the lawyers for the plaintiff, and all the persons who tried to make service, and including the United

States Marshal and his four deputies, and those who have made affidavits herein, of being perjurers and of exercising bad faith over me—me, the topmost professional litigant of the community with over ninety cases to my name—and I ask this Court's mercy and insist that this Court set aside the default judgment."

The law throughout the United States, and particularly in California State and Federal courts, is well defined on the issue now before the Court; namely, that defendant Woodruff is not entitled to equitable relief unless he first shows that he has clean hands. By this we mean that this court must believe that he did not attempt to evade the service of summons issued by this court, as is charged by plaintiff. If the Court believes that he is not guilty of this charge, then defendant Woodruff must show mistake, inadvertence, or excusable neglect. We submit that defendant Woodruff has shown no such statutory grounds whatever here, but has merely attempted to raise a controversy over various wholly collateral matters which are not before this Court upon this motion, to the end possibly, that he might feel he could confuse this Court into believing that some doubt exists which might be decided favorable to him. This is the only conclusion that we can reach from the attitude expressed in the various affidavits he has filed.

Now, if all these conditions are complied with and defendant Woodruff were before this Court with all of these issues decided favorably to him by this Court, then it becomes a matter solely in the discretion of this *Honorable* Court to decide whether or not equities also are favorable to this defendant Woodruff to entitle him to the equitable relief he seeks. At law he is entitled to no relief. He has been served according to law and the rule of this court. He has failed to answer within the time prescribed by law. It must be plain to this Court that the said defendant Woodruff has *contemptiously* dealt with the process of this court, in this very proceeding, and as a result whereof he must now seek the mercy of this Court for such *contemptious* acts. We submit he is entitled to no mercy, but if perchance this Honorable Court feels that the said defendant Woodruff is entitled to the mercy of this Court and that this Court's discretion is going to be exercised favorable to him, then surely

it is not to be at the cost and expense of this plaintiff, who has acted throughout in the utmost good faith and who has shown by the records of this court and the cost bill upon which a judgment has been rendered for the amount of $1,595.00, and to the sum in actual costs expended by plaintiff herein in his attempts to obtain service upon the said defendant Woodruff, while he was successfully evading same, should be "mercifully" added, and not less than $5,000.00 in attorney's fees, to include the costs on this motion.

It may be plainly seen from the uncontrovertible facts before this Court that defendant Leonard Woodruff is probably the topmost professional litigant in this community, throughout all of the courts. Five of his Appellate Court proceedings are noted in this memo, wherein the said Woodruff has appealed without merit having been found therein. Fifty-seven cases are noted in the Superior Court of Los Angeles County, and thirty-three in the Municipal Court, wherein he is a litigant, a grand total of ninety cases. Excerpts from a number of his records in the Superior Court have been noted in this memo, some of which were pending during the time that the action herein has been before this Court, wherein the said defendant Leonard Woodruff has been accused of secreting himself for the purpose of evading service of summons, and in each of such proceedings the Superior Court has found that he so secreted himself and was avoiding the service of summons. He can be said to be a "professional" evader of summons. He has falsely accused this plaintiff before this Court without a scintilla of evidence to support the claim of violation of the Immigration laws. His attorney, Robert Beveridge, has done likewise. L. E. Lampton, County Clerk of Los Angeles Superior Court for twenty years, flatly accused the said Beveridge of false swearing in his affidavit in this very court.

We respectfully pray in the interests of justice that the motion of defendant Woodruff be denied.

Respectfully submitted,

LEONARD J. MEYBERG,
Attorney for Plaintiff.

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al, Defendants. No. 7256-C.

Affidavit of Paul M. Joseph.

State of California, County of Los Angeles, ss.

Paul M. Joseph, being first duly sworn, deposes and says:

That he is an attorney admitted to practice in the above entitled court; that he has examined the records in the office of L. E. Lampton, Clerk of the Superior Court in and for the County of Los Angeles, State of California; that the "Plaintiffs Index Book" in said office, dating back to 1921, shows that defendant Leonard Woodruff in the above entitled action, was plaintiff in the following case numbers on file in the office of the said Clerk of the Superior Court in and for the County of Los Angeles, State of California, to wit:

Woodruff v. Tilt	No. 279030
Woodruff v. Kurfuss	276902
Woodruff v. Lewis	276524
Woodruff v. Golden	276469
Woodruff v. Kurfuss	275625
Woodruff v. Stegman	258070
Woodruff v. Schuelke	254602
Woodruff v. Schuelke	254601
Woodruff v. Weinblatt	253783
Woodruff v. Bishop	249707
Woodruff v. Provident Loan	249706
Woodruff v. Lewis	241428
Woodruff v. Becker	211002
Woodruff v. Mary Lewis	203698
Woodruff v. Lewis	201478
Woodruff v. Coates	B-94475
Woodruff v. First National Bank of Pasadena	317203
Woodruff v. American Clay Co.	324632
Woodruff v. Ernest Walker	334841
Woodruff v. Milton Golden	341004
Woodruff v. Maryland Casualty	357098

Woodruff v. Gavin Craig	358112
Woodruff v. Weinblatt	360282
Woodruff v. Gavin Craig	403078
Woodruff v. Los Angeles County	413593
Woodruff v. Joe Weinblatt	432553

That in the "Defendants Index Book" in the Clerk's office in the Superior Court in and for the County of Los Angeles, State of California, the said defendant Leonard Woodruff herein was defendant in the following entitled and numbered cases:

Victor Emden v. Woodruff	No. 127853
M. Stack v. Woodruff	139983
W. E. Simmons v. Woodruff	159721
Curtis Studios v. Woodruff	195043
City of Los Angeles v. Woodruff	202550
Los Angeles Bond & Securities Co. v. Woodruff	226901
Chas. Vajda v. Woodruff	244646
M. N. Minehardt v. Woodruff	246022
Curtis Studios v. Woodruff	246619
Arthur Stegman v. Woodruff	256705
Stegman v. Woodruff	256840
Alice Kurfus v. Woodruff	267684
Harry A. Smith v. Woodruff	270273
Madeline Wills v. Woodruff	277870
Barker Bros. v. Woodruff	283672
R. E. Hopkins & Co. v. Woodruff	289251
Wills v. Woodruff	306862
J. T. Carroll v. Woodruff	309708
Lewis v. Woodruff	320284
J. A. Coleman v. Woodruff	339655
Adolph Ramish, Inc. v. Woodruff	344344
Chas. Ehrlick v. Woodruff	356383
W. C. Bohne v. Woodruff	CA-2051
Harry Tumansky v. Woodruff	359763
F. E. Keeler v. Woodruff	364777
Flanagan v. Woodruff	366377
R. E. Allen, Trustee v. Woodruff	372911
James Darnell v. Woodruff	377657
Trompeter & Co. v. Woodruff	383014
Trompeter & Co. v. Woodruff	399480
George Fowler v. Woodruff	402825

That the said defendant herein, Leonard Woodruff, was appellant in the following proceedings in the Appellate Court of the State of California, to-wit: Civil Case No. 7560, 110 Cal. App. p. 375, in which the Appellate Court in the opinion by Presiding Justice Works referred to Mr. Woodruff's appeal as follows: "We are satisfied that the appeal is without merit."

That the said Leonard Woodruff, defendant herein, was the appellant in Civil Case No. 6818 in the Appellate Court of California. The judgment of the lower court against defendant Woodruff was affirmed and the opinion by Presiding Judge Conray closes as follows: "We think, therefore, that the suggestion that the judgment is against law by reason of the asserted defect in the defendant's answer, is without merit." This was a unanimous decision of the Court and a petition by Woodruff for a rehearing of this cause was denied. (118 Cal. App. 318, 323.)

That the said Leonard Woodruff, defendant herein, was the appellant in the Supreme Court of the State of California in the case of Adolph Ramish, Inc., Respondent, v. Leonard J. Woodruff, Appellant, 2 Cal. Reports, 2d Series 190, wherein the judgment of the Superior Court against said Woodruff was affirmed. The opinion is by Justice Curtis.

That the said defendant herein, Leonard Woodruff, is the petitioner for Writ of Certiorari to review an order of the Superior Court of Los Angeles County in an action wherein Leonard Woodruff was defendant, in Civil Action No. 10360 in the Appellate Court of California, 6 Cal. App. (2d) p. 430, which Writ, without appearance by the respondent, was denied to the said Leonard Woodruff.

That the said Leonard Woodruff, defendant herein, was the appellant in Civil Case No. 9820 before the Appellate Court of the State of California, 14 Cal. App. (2d) p. 279, wherein the said Leonard Woodruff appealed from a decision of the Superior Court of Los Angeles County, which said judgment against the said Leonard Woodruff was affirmed by unanimous opinion of the said Court, and the Court says: "The trial court made adequate findings on all the issues; the evidence supports these findings and we find no error

in the record. The judgment is affirmed and the appeal from the order denying motion for new trial is dismissed, no appeal being authorized by law from such an order." The said defendant Woodruff thereon filed a petition to have the said cause heard in the Supreme Court which was denied.

In the same Reports, to-wit, 14 Cal. App. Reports, 2d Series, at p. 628, there is another case wherein defendant herein, Leonard Woodruff, was the defendant in the Superior Court and was the appellant in the Second Appellate District Court in Case No. 10563. This is a unanimous opinion of the Court; we quote from the opinion at p. 629: "Despite the formidable presentation of this appeal by means of a voluminous transcript and a book of exhibits exceeding five hundred printed pages, we find, upon analysis, a comparatively simple case." Further in the said opinion appears the following at p. 630: "Notwithstanding that he (Leonard Woodruff) engaged in business on a large scale during 1925 and in subsequent years, holding a great many oil leases in Oklahoma, owning ranches and homes in several different states, having accounts in a goodly number of banks, buying and selling stocks and bonds, and as a side line, carrying on a business dealing in antiques, having during at least a part of the time the assistance of a secretary-bookkeeper, and having had prior direct contact with the internal revenue department, this defendant (Leonard Woodruff) failed to file an income tax return for the years 1925, 1926, 1927, 1928, 1929 and 1930. The department in 1931 endeavored, by every reasonable means, to get him to make a report on this matter, forwarding its communications by registered mail and having a representative interview him, all to no avail. At last, the final notice, advising him of impending distraint proceedings, bringing no response, the defendant claiming to be ill then and on other occasions, the internal revenue collector for the Southern California District in early December attached his property, including an active account with a stockbroker, running into many thousands of dollars."

That the said opinion further refers to a cross-complaint, filed by defendant Leonard Woodruff in said action upon which the trial court found against him on all material issues, but wherein the said defendant, Leonard Woodruff,

as cross-complainant, charged the plaintiff with negligence, "also charging him in counterclaim with various faults, deficiencies, delinquencies, and even conversion of personal property." The opinion was concurred in by the Court unanimously and the petition by Leonard Woodruff for rehearing of the cause was denied.

In each of the foregoing appeals, except for the last one, the name of Edward Fitzpatrick appears as of counsel for the said Leonard Woodruff.

That affiant has examined the record and file of the last mentioned case in the Office of the Clerk of the Los Angeles Superior Court, entitled "James L. Darnell v. Leonard J. Woodruff," No. 377657. That the complaint was filed August 29, 1934. That judgment was rendered in said action against the said defendant, Leonard Woodruff. That in the said action the said Leonard Woodruff verifies a statement that one R. F. McCrory had been employed by him and with Howard Woodruff and others he had taken them to Washington, D. C. in February of 1934 to assist him. That in said action the plaintiff Darnell verifies his answer to a cross-complaint wherein he states that the said defendant herein, Leonard Woodruff, advised him that the "said R. F. McCrory was untrustworthy, was a joint conspirator with other parties to financially ruin him, and that he had better not see the said R. F. McCrory about said matter." That in the said pleading of the said Leonard Woodruff in said action he alleged under oath that he had taken the said McCrory and Howard Woodruff to Washington, D. C. in 1934, at his expense, for thirty days. In the findings of the Court, however, in said action at page 29 thereof, the Court finds that they did not stay in Washington for thirty days, as alleged by said Leonard Woodruff, but merely for one week. That in the said action the Honorable Marshall F. McComb issued his order for publication of summons dated and filed September 18, 1934, which states as follows:

"On reading and filing the affidavits of Enid Finch, James M. Huddy, Frances B. Cobb, and A. B. Pratt, and it satisfactorily appearing therefrom to me that the defendant Leonard J. Woodruff cannot after due diligence be found within this state, and it also appearing from the verified

complaint and affidavit of James L. Darnell that a good cause of action exists in this action. . . . . and that personal service of the same cannot be made upon defendant Leonard J. Woodruff for the reason hereinbefore contained, and by said affidavit made to appear."

That the said order recites that "it satisfactorily appears that the residence of the said defendant is at 2446 Inverness Avenue, Los Angeles, California." That the Court ordered that summons be published at least two weeks and that a copy of the summons and complaint be mailed to the defendant Leonard Woodruff at that address. That in the records of said case there is a five-page affidavit of Frances B. Cobb, attorney for Darnell therein, which sets forth his efforts to get in touch with said Leonard Woodruff and several other persons purported to represent Woodruff, all unsuccessful. To said affidavit are attached several letters of Cobb to representatives of Woodruff, and also the affidavits for publication of summons in the case of Harry Tumansky vs. Leonard J. Woodruff, Los Angeles Superior Court No. 359763.

That in said action there appears the affidavit of one Enid Finch dated September 17, 1935, stating in substance that he went to the residence of defendant Leonard Woodruff on September 7, 1934, at 2446 Inverness Avenue, Los Angeles; that the door was answered by a Chinese servant who said Woodruff was not at home and that Woodruff had not been there for a long time, and that he had not been there for over a month; that on September 10 he again called at said home and the same servant answered the door and stated that the said Woodruff was not at home, but to leave a telephone number and that she would get in touch with said Woodruff and give his message; that he left his telephone number but never heard from said Woodruff; that the same thing was repeated on September 11 and again Woodruff did not reply; that on September 14, with one Huddy, a Special Deputy Sheriff, he called at Woodruff's antique store at 4534 Hollywood Boulevard, and inquired of one Edith Jackson in charge of the store for said Woodruff; that Mrs. Jackson told him she had not seen Woodruff for over a month; that he then showed the summons and complaint to Mrs. Jackson, saying that he wanted to serve same upon

her employer Woodruff: that the said Mrs. Jackson took said summons and complaint, looked at same, and said she would tell Woodruff of its contents. That the said Finch's affidavit further states on page 3 thereof, as follows:

"Affiant then called at 6317 Hollywood Boulevard, being a parcel of real property owned by the defendant, and inquired of the tenant who operates a jewelry store upon said property, for Mr. Woodruff, and had the following conversation: 'Who is the owner of this property?' The tenant answered: 'Mr. Woodruff, but you will have to see Thelma Weiser to whom I pay my rent and I suggest that you go next door and see Mrs. Flower first.' That affiant called next door and asked for Mrs. Flower and the following conversation occurred: Affiant said: 'I desire to see the owner of this property.' Mrs. Flower replied: 'What do you wish to see him about? If it is in regard to any of his property, I take care of all of his affairs.' Affiant replied: 'Do you take care of all of Mr. Woodruff's affairs?' She replied: 'Well, not all of them but most of them.' Affiant then said: 'I have a complaint to serve in the case of Darnell vs. Woodruff, and I want to know where I can serve Mr. Woodruff.' Mrs. Flower replied that on August 23 she saw Mr. Woodruff at the residence of Anna Lane which is above the antique store at 4534 Hollywood Boulevard, and talked with Mr. and Mrs. Woodruff about his affairs and that Mr. Woodruff stated that a United States Marshal was attempting to serve him with some subpoena. That he was not going to be served with the same. Mrs. Flower said: 'I tried to get him to accept service of the subpoena but he said he would not.' Mrs. Flower further stated that she was positive that Mr. Woodruff's attorney would not accept service of the Darnell complaint and summons, but that she would try to get him to accept service so they could fight the case to the limit. She stated that she was not sure that she could deliver the message to Mr. Woodruff but that she could to Mrs. Woodruff."

That there is in the said file an affidavit of the said Huddy to the effect that he is a Special Deputy Sheriff and accompanied Enid Finch, who makes the aforesaid affidavit, to Woodruff's store on September 14, 1934 and that the conversation set forth therein is true.

That in said file is a further affidavit of one Pratt to the effect that he is a Deputy Sheriff and his duties consist of serving complaints and summons in civil matters, and that on August 29, 1934, he called at Mr. Woodruff's home at 2446 Inverness Avenue at 8 A. M. and was told by the maid that Woodruff was out and she did not know when he would be in.

That affiant inspected the file in the case of Harry Tumansky, et ux, vs. Leonard Woodruff, Gavin Craig and Mary Wallace, Los Angeles Superior Court No. 359763. That said complaint was filed July 11, 1933. That said suit was on notes of Leonard Woodruff in favor of Gavin Craig. That judgment went for the plaintiff and the findings of the Court found the affirmative defenses set up by Leonard Woodruff were untrue. That the answer of Leonard Woodruff in said action sets up an agreement between the said Gavin Craig and the said Woodruff, and that the notes were delivered to the said Craig for a particular purpose, with an agreement that the notes would be returned to the said Woodruff after that purpose was accomplished, but nowhere in said pleading was there any statement as to what the said particular purpose was. That after said judgment went against the defendant Woodruff in said action he appealed the said case, as aforesaid. That the Appellate Court affirmed judgment against Woodruff as aforesaid. That Edward Fitzpatrick was one of the counsel for said defendant Leonard Woodruff in said action. That in said action there appears an order for publication signed September 27, 1933 by Hartley Shaw, Judge, and filed same day, which reads in part as follows:

"Upon reading and filing the affidavit of Milton Mack, Austin Sherman, and it satisfactorily appearing therefore to me that defendant Leonard J. Woodruff conceals himself to avoid the service of summons . . . and that personal service of same cannot be made upon said defendant Leonard J. Woodruff for the reason hereinbefore contained and by said affidavit made to appear, order is made for publication of summons for one month . . . . and it further in like manner satisfactorily appearing to me that the residence of said defendant Leonard J. Woodruff was last known to be 2446 Inverness Avenue, Los Angeles, California."

That it is ordered therein that a copy of the summons and complaint be mailed to defendant Leonard Woodruff at said address, 2446 Inverness Avenue, Los Angeles, California.

That in the record of the said action there appears an affidavit of one W. E. Malot, who swears that he is a process server employed by one Milton Mack; that he searched the telephone directory, which did not give the home address of Woodruff but gave his business address at 4532 Hollywood Boulevard. That he had a conversation with Mrs. Jackson in which she stated that said Woodruff was not in and that she refused to give him his home address. That he ascertained that the telephone number at his home address was a private one according to advice from the telephone company. That he advised Mrs. Jackson that he wanted to arrange for a service of summons and that the said Mrs. Jackson stated she would inform said Leonard Woodruff to arrange for appointment for service of summons, and that upon telephoning ten days later he was informed by Mrs. Jackson that she had not seen Woodruff but had informed his attorney. That the affidavit of the said Mack states that he went to the home and business address of Woodruff on numerous occasions at different times of the day and night and was never able to contact said Woodruff. That he talked to Mrs. Jackson at Woodruff's store, who stated that she was in complete charge of the store and that Mr. Woodruff never comes around and that she does not know where he could be reached; that on numerous occasions he talked to the maid at 2446 Inverness Street, who declined to give her name and said that Woodruff lives at that address, but that he is seldom home and that she has no knowledge as to where he goes or stays; that every time he went to the said home address the curtains were drawn and the house had an abandoned atmosphere. That on September 10, 1933 he talked to a young woman at Woodruff's home who said she was his daughter, but that she saw very little of him; that he consumed a whole month in an honest effort to locate and serve Mr. Woodruff, "but Woodruff concealed himself in order to avoid service of summons."

There appears in the file of the said action the affidavit of one Austin Sherman, who alleges under oath that prior to the commencement of the said action the said Woodruff

had sued Gavin Craig. That he told Woodruff's attorney that the present action would be filed and that since the filing thereof he had asked Woodruff's attorney if he still represented him; that he said he did. That he requested his attorney to enter an appearance for Woodruff for the reason that he could not serve summons and complaint on the said Woodruff and that said attorney for said Woodruff stated that he was sure he would be able to do so. That later he requested Woodruff's attorney to sign a stipulation that at a future date he would enter an appearance on behalf of said Woodruff, but that he refused to do so, although he knew that the present action was pending. That the said attorney further stated under oath that in addition to the summons and complaint given to Milton Mack, that he gave a copy of the summons and complaint to one Merlin Donaldson and that he knows of his own knowledge that he went to the place of residence, as well as the place of business of Mr. Woodruff on at least ten different occasions and was unable to serve the summons and complaint on said Woodruff. That in the said files of the said case there are several affidavits of Edward Fitzpatrick going into the merits of the said case.

That affiant has examined the files in the case of Adolph Ramish, Inc. vs. Leonard J. Woodruff, No. 344344, filed July 29, 1932, wherein judgment went for plaintiff and against the said defendant Leonard Woodruff. That in said action there appears an order for publication of summons signed and filed September 14, 1932 by the Honorable Harry R. Archbald, as follows:

"Upon reading and filing the affidavit of H. H. Harris, one of the plaintiff's attorneys, and it satisfactorily appearing therefrom to me that the defendant Leonard J. Woodruff conceals himself to avoid service of summons, and it also appearing from the affidavit of Hugo H. Harris and James Markey that a good cause of action exists in this action . . . . . and it further in like manner satisfactorily appearing to me that the residence of said defendant is at 2446 Inverness Street, Los Angeles, California, and that said defendant receives mail at such address daily,"

it is ordered that a copy of the summons and complaint be served by mail.

That in said action there appears an affidavit of James Markey that he is a Deputy Sheriff whose duty it is to serve summons and complaints; that he called at 2446 Inverness Street, the residence of said Woodruff, on August 15, 1932, with a copy of the summons and complaint and told the maid his name and his official position and asked for Mr. Woodruff, and that the said maid asked him to wait outside until she inquired whether Mr. Woodruff could see him, and in a few minutes thereafter she returned to the door and told affiant that the said Woodruff was too ill to be seen and that any matters pertaining to business could be transacted with parties in charge of Mr. Woodruff's store at 4526 Hollywood Boulevard, or with his attorney. That three times later he called at said residence address between August 15 and August 23, 1932, but received the same information. That the maid informed him that Mr. Woodruff stated he should take the matter up with his attorney who would accept service of summons.

In said action there also appears the affidavit of Hugo H. Harris, attorney for the plaintiff, to the following effect. That on August 5, 1932, he telephoned Woodruff's residence and was told that he could not come to the telephone. That he requested to speak to Woodruff's wife and thereupon a woman's voice answered who stated she was Mrs. Woodruff, and then he spoke to Mrs. Woodruff about the case and that Mrs. Woodruff said that Mr. Cobb represented Mr. Woodruff and that said Harris should contact him. That thereupon he telephoned said attorney and said to him that Woodruff was apparently avoiding service and requested him to ascertain if Woodruff would give him authority to make appearance. That said attorney stated that he was going to see Mr. Woodruff the same afternoon at his home, 2446 Inverness Street, Los Angeles, and would make an immediate answer, and thereupon the next morning the said affiant had a telephone conversation with the said attorney but that said Woodruff refused to authorize him to accept said service, and that said Woodruff felt that if service could be delayed the matter might somehow be adjusted and that the said Woodruff hoped to delay the matter sufficiently long to work out a settlement with certain other parties interested in the matter and would avoid service for that purpose.

That the said Superior Court records indicate that the said Woodruff was also defendant in the following Municipal Court cases: #38508, People vs. Woodruff; #66205, Gore Bros. vs. Woodruff, and others.

That in the case of Darnell vs. Woodruff the said Francis B. Cobb, who was the attorney for the plaintiff in said action, but who previously had been an attorney representing the said Leonard Woodruff and who had represented him in the Tumansky case aforementioned, states under oath in an affidavit dated September 18, 1934, as follows: "That the defendant Leonard Woodruff has concealed himself from date of the filing of this action and is now concealing himself to avoid service of summons."

That defendant (Leonard Woodruff) was sued in Municipal Court, Cobb vs. Woodruff, No. 317915. That it was impossible to effect personal service, but that after plaintiff procured an order for publication he answered.

That in the case of Tumansky vs. Leonard Woodruff, No. 359763, Superior Court, it was necessary for plaintiff Tumansky to publish summons on the ground that defendant (Leonard Woodruff) concealed himself to avoid service of summons.

That in the case of George Fowler vs. Leonard Woodruff, No. 402825, Superior Court of Los Angeles County, wherein the same Edward Fitzpatrick represented the said Leonard Woodruff, defendant therein, there appears an order of Judge Bowron for publication on the grounds of concealment to avoid service. That in said action there is an affidavit of J. J. Ashby and F. C. Rhoades. That the latter states that he received the summons and complaint in the action on November 27, 1936. That "subsequent to November 28, 1936 affiant inquired at the Sheriff's office, Los Angeles, for information regarding defendant (Leonard Woodruff) and was informed by Mr. Barton (a Chief Deputy) and other Deputies in said Sheriff's office that defendant (Leonard Woodruff) resides at 2446 Inverness Avenue, but that it would be impossible for affiant to serve said defendant (Leonard Woodruff) for the reason that he was extremely expert at evading service—that Sheriff's office (Los Angeles County) had made numerous attempts to

serve said defendant (Leonard Woodruff) but that they were unable to do so and would not accept any papers for service upon said defendant. That affiant is advised that defendant (Leonard Woodruff) has had concealed doors installed at his place of business with one entrance on Sunset and three entrances on Hollywood Boulevard so contrived that he can leave and enter without being observed by persons seeking to serve him, for specific purpose of evading service of process. That affiant avers defendant (Leonard Woodruff) is concealing himself to avoid service."

That since this affidavit was prepared to this point affiant has examined the records of the Clerk's office of the Los Angeles Municipal Court, and according to the Index File of record therein he finds that the said Leonard Woodruff is plaintiff or defendant in the following numbered Municipal Court cases: 12738, 21291, 29030, 41616, 66205, 69062, 101845, 103364, 104148, 111607, 113890, 128081, 146499, 157105, 212958, 216428, 218945, 223568, 224015, 226618, 244807, 288130, 297207, 313599, 317915, 489049, 440295, 431921, 325175, 325174, 313882, 209695 and 168583.

Further affiant saith not.

PAUL M. JOSEPH.

Subscribed and sworn to before me this 17th day of May, 1939. A. W. Brunton, Notary Public in and for said County and State. (Notarial Seal).

Heiser Exhibit J.

[Minute Order.]

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 8th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

Motion of defendant Leonard Woodruff for order of this Court to vacate and set aside the default and the default judg-

ment entered herein against the said defendant, and to permit the said defendant to file his answer herein, having come on regularly for hearing on the 10th day of April 1939 at 10 o'clock A.M. of said day, the Honorable Judge Geo. Cosgrave presiding, and Ames Peterson, Esq., appearing as counsel for the said defendant Leonard Woodruff and Leonard J. Meyberg, Esq., appearing as counsel for the plaintiff herein, and the Court being fully advised in the premises, and the said Ames Peterson, Esq., counsel for said defendant Leonard Woodruff, having applied to the Court for permission to file additional points and authorities and the Court having allowed the said defendant Leonard Woodruff time within which to file the same and having allowed time to the plaintiff within which to answer the same, and the said parties having filed their additional points and authorities and additional affidavits, and the said parties having appeared before the Court on the 25th day of May 1939 at the hour of 2 o'clock P.M., the defendant Leonard Woodruff by his counsel Ames Peterson, Esq., and the plaintiff by his counsel Leonard J. Meyberg, Esq., and the said parties having, through their said respective counsels, stipulated that all affidavits filed be a part of the record, and the Court being fully advised in the premises, and the matter having been submitted, and no adverse interest appearing,

It Is Hereby Ordered that the motion of defendant Leonard Woodruff for the order of this Court to vacate and set aside the default and the default judgment heretofore entered herein against the said defendant Leonard Woodruff, and for order of this Court permitting said defendant Leonard Woodruff to file his answer herein, be, and the same is, hereby denied.

The parties appearing before the Court on May 25, 1939, through their said respective counsel, to-wit: plaintiff by Leonard J. Meyberg, Esq., and defendant Leonard Woodruff by Ames Peterson, Esq., having further stipulated that on Monday, June 12, 1939, at 2 o'clock P.M., or as soon thereafter as counsel may be heard, the said Judge of the Court herein may hear evidence on behalf of the plaintiff and evidence on behalf of said defendant Leonard Wood-

ruff as to the value of the property of plaintiff herein, for which damages were allowed in the judgment herein against the said defendant, which said hearing shall be without a jury, a jury being expressly waived by the parties, and the issues at such hearing to be limited to ascertaining by the Judge of the said Court, from such evidence to be presented by the said parties under the rules of evidence of said Court, the sum or amount of damage that may represent the value of the said property of plaintiff for which damages were allowed in the said judgment herein against the said defendant, as in said complaint alleged, and that should the said Judge of said Court, after such hearing, find from such evidence that the value of the said property with interest thereon at 7% per annum from May 13, 1929, to date of entry of judgment, is less than the sum or amount of the judgment entered herein against the said defendant Leonard Woodruff, then and in such event the said judgment entered herein may be modified and reduced in amount by said Judge of said Court to such sum as the said Judge of this Court may find from such evidence, as aforesaid, together with costs as in said judgment stated, and any additional costs which the Court may find proper, and with interest thereon, and it was further stipulated between the said respective counsel representing plaintiff and said defendant Woodruff that plaintiff waives as against said defendant Woodruff his claim to exemplary and punitive damages of $150,000.00 set up in his first cause of action in his complaint, page 22, paragraph XV, lines 6 to 9, and his claim for damages of $100,000.00 for loss of rights and profits in his complaint on page 24, paragraph III, lines 21 to 24, and his claim for exemplary and punitive damages of $150,000.00 in his second cause of action in said complaint, page 24, paragraph IV, lines 26 to 30, and the claim for exemplary and punitive damages in the sum of $150,000.00 set up in the third cause of action, page 28, paragraph IV, lines 11 to 14, and that such exemplary or punitive damages shall not be considered by the Judge in ascertaining the value of the said property, and notice of such hearing having been expressly waived.

It is the intent and purpose of this Order that such competent evidence as either party desire to present be received

by the said Court at said hearing and considered by it in determining the actual value of the property which plaintiff alleges was converted by the defendants,

Now, Therefore, It Is So Ordered.

Heiser Exhibit K

[Clerk's Minutes]

At a stated term, to-wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 12th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented, the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939:

It is ordered that the cause be, and it hereby is, continued to June 19, 1939, at 2 o'clock P. M. for the said proceedings.

At a stated term, to-wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 19th day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming on for presentation of evidence as to

the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Ames Peterson, Esq., appearing for Leonard Woodruff.

Attorney Meyberg makes a statement, and Attorney Peterson makes a statement; whereupon,

Frank A. Marcher, at 2:20 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Peterson, is examined on voir dire by Attorney Meyberg; on re-direct examination by Attorney Peterson; on cross-examination by Attorney Meyberg; is examined by the Court; and testifies further on re-cross-examination by Attorney Meyberg. The following exhibits are marked for identification:

Plf's. Ex. 1 for Ident.—Purported sample of industrial rough sapphire material.

Plf's Ex. 2 for Ident.—Purported sample of Australian blue rough sapphire material.

At 3:22 o'clock P. M., after a ten minute recess, Court reconvenes with all present as before.

Ted William Zimmer, at 3:23 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Peterson; at 3:31 o'clock P. M. on cross-examination by Attorney Meyberg; is examined by the Court; testifies further on re-direct-examination by Attorney Peterson, and on re-cross-examination by Attorney Meyberg. The following exhibits are marked for identification:

Plf's Ex. 3 for Ident.—Purported sample of rough zircon material.

Plf's Ex. 4 for Ident.—Paper with one stone being Australian blue sapphire.

At 3:55 o'clock P. M. Court recesses in this case until June 22, 1939, at 10 o'clock A. M.

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Thursday, the 22nd day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant, Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against the defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Ames Peterson, Esq., appearing for Leonard Woodruff; H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings; at 10:45 o'clock A. M. Court reconvenes in this cause:

It is ordered that Robert L. Beveridge, Esq., who is present, be associated as counsel for Defendant Woodruff on motion of Attorney Peterson.

Walter Calvin Smith, at 10:43 o'clock A. M., is sworn and testifies for the defendants on direct examination by Attorney Beveridge, and on examination on voir dire by Attorney Meyberg.

At 11:25 o'clock A. M. Court recesses until 2:30 o'clock P. M. At 2:35 o'clock P. M. Court reconvenes, and all being present as before,

Walter Calvin Smith, heretofore sworn, resumes the stand and is examined by Attorney Meyberg on voir dire.

and testifies on re-direct examination by Attorney Beveridge.

Walter F. Godber, at 2:53 o'clock P. M., is sworn and testifies for the defendant on direct examination by Attorney Beveridge, is examined by the Court, and at 3:15 o'clock P. M. is cross-examined by Attorney Meyberg.

At 3:17 o'clock P. M. Court recesses for ten minutes. At 3:35 o'clock P. M. Court reconvenes, and all being present as before.

Walter F. Godber resumes the stand and testifies on cross-examination by Attorney Meyberg, is examined by the Court, testifies on re-cross-examination by Attorney Meyberg, and on re-direct examination by Attorney Beveridge.

The following exhibit is marked for identification:

Plf's Ex. 5 for Ident.—Burnishing tool.

At 4:10 o'clock P. M. Court recesses in the trial of this case until 10 o'clock A. M., June 23, 1939.

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Friday the 23rd day of June, in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for Leonard Woodruff; H. A. Dewing, being

present as Court Reporter and reporting the testimony and the proceedings; at 10:06 o'clock A. M. proceedings herein continue:

Irving Oreck, at 10:07 o'clock A. M., is sworn and testifies for Defendant Woodruff on direct examination by Attorney Peterson; is examined by Attorney Beveridge, at 10:15 o'clock A. M. is cross-examined by Attorney Meyberg; testifies on re-direct examination by Attorney Beveridge; and is examined by the Court.

Defendant Woodruff's Exhibit A for Ident.—Being a cigar box half full of stones, is marked for identification, and later, is admitted into evidence:

Howard L. Woodruff, son of Leonard Woodruff, at 10:40 o'clock A. M. is sworn and testifies for Defendant Leonard Woodruff on direct examination by Attorney Beveridge.

At 10:42 o'clock A. M. Court recesses for ten minutes. At 11:03 o'clock A. M. Court reconvenes, and all being present as before,

Howard L. Woodruff resumes the stand and is further examined by Attorney Beveridge; at 11:13 o'clock A. M. is cross-examined by Attorney Meyberg; testifies on re-direct examination by Attorney Peterson; and on re-cross-examination by Attorney Meyberg. The following exhibits are offered and admitted into evidence:

Def't Woodruff's Ex. B—Warehouse Receipt 5 9 32 signed by Howard L. Woodruff,

Def't Woodruff Ex. C—One (1) sheet reading "Bag Rock weight 168", etc.,

Def't Woodruff's Ex. D—Notice of Unsecured Property Taxes 1939-1940, 35 bags sample ore, 415 S. San Pedro, etc.

Mrs. Willie May Woodruff, at 11:38 o'clock A. M. is sworn and testifies for Defendant Woodruff on direct examination by Attorney Beveridge; at 11:40 o'clock A. M. is cross-examined by Attorney Meyberg, and testifies on re-direct examination by Attorney Beveridge.

The defendant rests at 11:52 o'clock A. M.

At 11:53 o'clock A. M. Court recesses in this case until June 27, 1939, at 10 o'clock A. M.

Heiser Exhibit L.

[Clerk's Minutes.]

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 27th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that they represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for Leonard Woodruff; and H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings:

Ted M. Sturdevant, at 10:04 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, is examined by the Court, and cross-examined by Attorney Peterson.

Gertrude S. McMullen, at 10:15 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, on cross-examination by Attorneys Peterson and Beveridge, on re-direct examination by Attorney Meyberg, on cross-examination by Attorney Peterson, and is examined by the Court. The following exhibit is marked for identification:

Plf's Ex. 6 for Ident.—Piece of black industrial sapphire, and piece of burnishing tool, and the said exhibit is later offered and admitted into evidence.

Clare Woolwine, Esq., at 10:42 o'clock A.M. is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg.

At 11:56 o'clock A.M. Court recesses for ten minutes. At 11:10 o'clock A.M. Court reconvenes, and all being present as before,

Maurice Emanuel Heiser, plaintiff, at 11:10 o'clock A.M. is sworn and testifies in his own behalf on direct examination by Attorney Meyberg, and at 11:32 o'clock A.M. is cross-examined by Attorney Peterson.

At 11:44 o'clock A.M. Court recesses until 2 o'clock P.M. today.

At 2 o'clock P.M. Court reconvenes, and all being present as before,

M. E. Heiser, heretofore sworn, resumes the stand and testifies on further cross-examination by Attorney Peterson, is examined by the Court, testifies on re-direct examination by Attorney Meyberg, on re-cross-examination by Attorney Peterson, and is examined by the Court. The following exhibits are either offered and admitted into evidence, or marked for identification, as indicated:

Deft's Ex. E—Bill of Lading 8/9/1928, "Received of Los Angeles Steamship Company",

Def's Ex. F For Ident.—Receipt for freight delivered.

Plf's Ex. 7—Portion of "Judgment Docket" in matter of Golden State Gem Co., a Corp., Bankrupt, as read into record by Mr. Meyberg,

Plf's Ex. 8—Information circular—Department of Commerce—Bureau of Mines, 11 sheets,

Plf's Ex. 2-B For Ident.—Small package of Blue Sapphires,

At 3:08 o'clock P.M. Court recesses in this case until 10 o'clock A.M., June 28, 1939.

At a stated term, to wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Wednesday the 28th day of June in the year of our Lord one thousand nine hundred and thirty nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence as to the value of the property of the plaintiff herein for which damages were allowed in the judgment herein against the said defendant, Leonard Woodruff, without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge and Ames Peterson, Esqs., appearing for defendant Leonard Woodruff; and H. A. Dewing be present as Court Reporter and reporting the testimony and the proceedings:

Witness M. E. Heiser, heretofore sworn, resumes the stand and testifies on further examination by Attorney Meyberg, and on cross-examination by Attorney Peterson, and the following exhibits are marked for identification:

Plf's Ex. 2-C For Ident.—Sample of Australian blue sapphires in the rough.

Plf's Ex. 2-D For Ident.—Three separate Australian sapphire stones.

Plaintiff's Exhibits 2-A, 2-B, 2-C, and 2-D are now offered and admitted into evidence; and Plaintiff's Exhibits 3 and 4, for identification, are now offered and admitted into evidence as Plaintiff's Exhibits 3 and 4, respectively.

Anthony P. Caluori, at 10:21 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, at 10:25 o'clock A.M. is cross-examined by Attorney Peterson; testifies further on redirect examination by Attorney Meyberg, and is examined by the Court.

John Morse, at 10:32 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, and at 11:38 o'clock A.M. is cross-examined by Attorney Peterson.

At 10:40 o'clock A.M. Court recesses. At 10:55 o'clock A.M. Court reconvenes, and all being present as before,

Gertrude S. McMullin, heretofore sworn, resumes the stand and testifies on direct examination by Attorney Meyberg, is examined by the Court, and is cross-examined by Attorney Peterson. The following exhibit is offered and admitted into evidence:

Plf's Ex. 9—Envelope containing stones.

Jules Howard, at 11:30 o'clock A.M., is sworn and testifies for the plaintiff on direct examination by Attorney Meyberg, at 11:33 o'clock A.M. is cross-examined by Attorney Peterson, testifies on re-direct examination by Attorney Meyberg, and is examined by the Court. The following exhibits are offered and admitted into evidence:

Plf's Exhibits 5 and 6 — Being the exhibits formerly marked for identification.

At 11:40 o'clock A.M. it is ordered that this cause be, and it hereby is, continued to 11 o'clock A.M., June 29, 1939, for further proceedings.

Heiser Exhibit M.

[Minute Order.]

At a stated term, to-wit: The February Term, A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Thursday the 29th day of June in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming on for further presentation of evidence, as to the value of the property of the plaintiff herein

for which damages were allowed in the judgment herein against the said defendant Leonard Woodruff without a jury, the issues to be limited to ascertaining from such evidence to be presented the sum or amount of damage that may represent the value of the property of the plaintiff for which damages were allowed in said judgment against the defendant, Leonard Woodruff, etc., pursuant to order filed June 8, 1939; Leonard J. Meyberg, Esq., appearing for the plaintiff; Robert L. Beveridge, and Ames Peterson, Esqs., appearing for the defendants; and no court reporter being present:

Attorney Peterson argues to the court re value of material; Attorney Beveridge makes a statement; and at 11:18 o'clock A. M. Attorney Meyberg argues to the Court; whereupon, it is ordered that the cause be submitted.

The Court makes a statement, and the value of the property in controversy is fixed at the amount fixed in the judgment, counsel to prepare order in the usual manner, with exception noted to the defendant.

Heiser Exhibit N.

Notice of Motion to Vacate Judgment to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene.

To the Above Named Plaintiff, M. E. Heiser, and his attorney of record, Leonard J. Meyberg:

You, and each of you, will please take notice that on Monday, September 18th, 1939, at the hour of ten (10) o'clock A. M., or as soon thereafter as counsel may be heard, Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, will move the above entitled Court, Judge Campbell E. Beaumont, judge thereof, Federal Building, Main and Temple Streets, Los Angeles, California, to Vacate Judgment, to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the

Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene.

You are further notified that said motion will be made upon the affidavit of merit of Leonard J. Woodruff, the affidavit of P. M. Jackson, Trustee in bankruptcy for the estate of Leonard J. Woodruff, upon the verified answer of Leonard J. Woodruff now in the files of the above entitled proceeding; upon the proposed verified answer of P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, the affidavit of Francis B. Cobb, attorney for said P. M. Jackson, the affidavit of merits of Leonard J. Woodruff filed in the above entitled case, and the Counter Affidavit of Leonard J. Woodruff Answering Plaintiff's Affidavit in Opposition to Leonard J. Woodruff's Motion as One of the Defendants to Said Default and Default Judgment, the affidavit of Howard Woodruff and upon the Points and Authorities on behalf of P. M. Jackson, trustee.

That said motion will be made upon the following grounds:

1. (a) Said process was not legally served in that this was an action at law commenced on July 11th, 1935, and under Rule 54 of this Court and Section 411 of the Civil Code of Procedure; that said process so attempted to be served was issued on April 21, 1937;

(b) Said process so attempted to be served by the United States *Marshall* when it was provided by the order of Court entered on January 26, 1939, that the same should be served by E. M. Daniels in the place and stead of said United States *Marshall*, which order was in effect at the time of the alleged service;

2. That the judgment was prematurely entered in that the complaint was based upon a joint liability and judgment was entered as against one defendant prior to the trial as to other defendants.

3. (a) The complaint does not state a cause of action;

(b) That the allowance of interest in said judgment is not supported by the complaint and is contrary to law;

(c) The complaint contains three separate and distinct counts and the judgment does not show upon which count the same is based, and said counts are inconsistent;

4. That said complaint is defective:

(a). The complaint shows on its face that it is barred by subdivision 4 of Section 338 of the Code of Civil Procedure and subdivision 3, Section 338 of the Code of Civil Procedure, Section 343 of the Code of Civil Procedure and Section 1624 of the Code of Civil Procedure.

(b) That the complaint shows the title to said merchandise passed to the Golden State Gem Company, a Nevada Corporation;

(c) That the complaint does not show title in M. E. Heiser as a judgment and execution sale alleged in the complaint have not been set aside or attacked;

(d) That the complaint was barred by laches which appears upon the face of the same.

Said motion will be made upon the ground that a fraud was practiced upon the above entitled court with respect to the entry of said judgment.

That said motion will be made upon the further ground that Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, Bankrupt, have a good and sufficient defense to plaintiff's alleged causes of action, and that they have been prevented from presenting said defense upon any trial of the merits by reason of fraud, accident, surprise and excusable neglect as is more particularly shown by the affidavits hereinabove mentioned and on file in the above entitled proceeding.

You are further notified said motion will be made upon

the files and records of the proceedings herein and upon the affidavits above set forth and upon the law and points and authorities submitted herewith.

Dated the 7th day of September, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard J. Woodruff, a Bankrupt.

Received copy of the within Notice to Vacate, etc., this 9th day of September, 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Sep. 11, 1939 at 11:35 a. m. R. S. Zimmerman. Clerk. By H. K. Jacobs, Deputy Clerk.

Heiser Exhibit O.

Affidavit of Merits in Support of Motion to Vacate Judgment by Default, Etc.

State of Oklahoma, County of Carter, ss.

P. M. Jackson, being first duly sworn, deposes and says:

That on July 5, 1939, Leonard J. Woodruff was duly adjudged a bankrupt in the District Court of the Untied States for the Eastern District of Oklahoma, and all proceedings in said matter were referred to George F. Clark as referee.

That on the 20th day of July, 1939, your affiant was duly appointed and qualified as Trustee in Bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and that at all times since said date he has been and now is the acting Trustee in Bankruptcy for the estate of Leonard J. Woodruff.

That on August 23, 1939, George F. Clark, as Referee in Bankruptcy, entered an order authorizing and directing affiant to institute the necessary legal action to vacate and set aside a default judgment in the above entitled proceeding, and authorizing affiant to employ Francis B. Cobb, of

the firm of Cobb, Campbell & Kelley, to represent him in said proceedings.

That affiant has read a copy of the verified proposed answer of Leonard J. Woodruff on file in the above entitled proceeding.

That so far as known to affiant and as appears from the records in the above entitled proceeding and from verified statements of the bankrupt filed in the bankrupt's proceedings in the United States District Court in and for the Eastern District of Oklahoma, and to Francis B. Cobb, special counsel for affiant and who has examined the files and records of the proceedings mentioned, and who has advised affiant, affiant does verily believe, that as the legal representative of said Leonard J. Woodruff, he has a good and sufficient defense to the alleged causes of action set forth in plaintiff's complaint.

Affiant further avers that he has been advised by the above named attorney that affiant is a proper party and has the legal right to intervene, appeal and contest the allegations in said complaint.

Affiant further avers that the default judgment entered in the above entitled proceeding is in the sum of $277,036.71 plus cos s and that the other claims against the above entitled estate so far as known to affiant are in the sum of approximately $800,000.00; that the other creditors in the above entitled estate will suffer irreparable injury and a substantial loss of their claims if the judgment in favor of said M. E. Heiser is permitted to stand and if the same is without merit, in that, the assets of the estate, so far as known to your affiant, will not exceed the sum of approximately $400,000.00 and the known claims including that of the said M. E. Heiser approximating nearly $1,100,000.00, the said M. E. Heiser will receive approximately $100,000.00 in dividends that may hereafter be declared in this proceeding to the detriment of the other creditors. Affiant avers that the other creditors have no right or privilege of defending or intervening with respect to said judgment, which judgment affiant is informed and believes is based upon fictitious values and was obtained by methods which amount to a constructive fraud upon the other creditors and your

affiant, as representative of said creditors, and in the event said judgment is set aside the alleged claim of said M. E. Heiser can be defeated in whole at a trial on the merits.

Affiant is further advised by his attorneys that said default was procured under mistake, inadvertence and surprise, in that, Leonard J. Woodruff, nor any of the creditors, knew, prior to the entry of said judgment, that the alleged process had been served.

Affiant is further informed and advised by said attorneys that said action by M. E. Heiser was an action at law and that said complaint was filed and said process was issued prior to September 20, 1938, to-wit: on the 21st day of April, 1937. That under the conformity act then in effect, personal service was necessary to be made upon the defendant, Leonard J. Woodruff, and that the service upon the son of said Leonard J. Woodruff was not a legal service, and that plaintiff and his attorney, knowing said facts, have attempted, to practice and did practice fraud upon the above entitled court and upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment and thereafter procuring an abstract of said judgment and recording same in the County Recorder's office prior to the filing of the bankruptcy proceeding, and said judgment has become a lien upon the real property owned by Leonard J. Woodruff in Los Angeles County, which property is an asset of said estate, the title to which said property is now vested in affiant by operation of law; that the same amounts to a lien and encumbrance affecting the assets of the estate of Leonard J. Woodruff, a bankrupt, which it is the duty of affiant to administer and liquidate.

That affiant has read the Notice of Motion to Vacate Judgment to Set Aside Default, to Vacate Orders Entered After Judgment, to Permit the Filing of an Answer by and on Behalf of Leonard J. Woodruff, to Permit the Filing of an Answer by P. M. Jackson, Trustee in Bankruptcy for Leonard J. Woodruff, and to Allow the Trustee in Bankruptcy to Intervene; that affiant believes and has been advised by his attorneys above named that the grounds set forth in said motion exist and that the same possesses merit, and that if granted, the claim of M. E. Heiser, as set forth in said complaint, and each count thereof, can be defeated

in whole, and that the property of this estate can then be released from the lien of said judgment; that the creditors of this estate will receive a larger percentage of their claims, and that affiant is entitled under the laws of this court, and of the State of California, to make this motion and to intervene and defend the alleged claim of M. E. Heiser.

P. M. JACKSON.

Subscribed and sworn to before me this 1st day of September, 1939. Monterey Leeper, Notary Public in and for said County and State. My Commission expires May 11, 1940. (Notarial Seal).

(Indorsed.)

Received copy of the within Affidavit of Merits, etc., this 9th day of Sept., 1939.

LEONARD J. MEYBERG,
Attorney for Plaintiff.

Filed Sep. 11, 1939. R. S. Zimmerman, Clerk. By H. K. Jacobs, Deputy Clerk.

Heiser Exhibit P.

Affidavit of M. E. Heiser.

State of California, County of Los Angeles, ss.

M. E. HEISER, being first duly sworn, deposes and says:

That he is the plaintiff in the above entitled action. That on or about the 29th day of June 1939 the above entitled Court, Honorable Geo. Cosgrave presiding, refused to grant defendant Leonard Woodruff a stay of execution upon his application therefor. That plaintiff's counsel stipulated with defendant Woodruff's counsel for a stay of execution until July 6, 1939, at the request of defendant Leonard Woodruff, upon the condition that there would be no assignment of whatsoever nature made by said defendant, and no change whatever in his status during said period. That contrary to said stipulation said defendant Leonard J. Woodruff did proceed to Ardmore, Oklahoma, and did on July 3, 1939, make his oath and petition in bankruptcy,

wherein he states, "that he has had his principal place of business for the greater portion of six months next immediately preceding of the filing of this petition at Ardmore, Oklahoma." That he lists as his creditors therein secured creditors consisting of three mortgage owners and his mother, Ida Bell Woodruff. That he lists as his unsecured creditors, his mother, Ida Bell Woodruff, in the amount of approximately $60,000, and his brother, Herman Woodruff, in the amount of $14,000, and his wife, Nellie May Woodruff, in the amount of $316,000, and one Davis in the amount of $10,650, and "judgment rendered against Leonard Woodruff March 20, 1939, Federal Court, Los Angeles County, California, No. 7256-C," and no other creditors. That he fails to list in his inventory of assets the Woodruff Antique Stores located at 4532 Hollywood Boulevard, Hollywood, California, which is valued at from $100,000 to $400,000, but states under Schedule B-4 that he has made "bill of sale dated July 3, 1939 of Woodruff Antique Stores located at 4532 Hollywood Boulevard, Hollywood, California, at a value of $30,000," which bill of sale he alleges to have been made to counsel for services rendered or to be rendered in his said bankruptcy. That said defendant Leonard Woodruff, upon examination in said proceedings in Oklahoma, did thereafter state under oath that the value of the said stores was from $100,000 to $400,000 for the personal property therein, and that the cost thereof in 1933 was in excess of $500,000, and that the building in which the said Woodruff Antique Stores was located had cost him over $200,000. That the same was free and clear. That he maintained no books pertaining to the said business.

That referring to the affidavits filed by the said Leonard Woodruff in the above entitled action on his motions heard before Judge Cosgrave, the said defendant Leonard Woodruff, upon examination in said proceedings in Oklahoma, testified on or about August 11, 1939, as follows:

"Q. Now Mr. Woodruff I want to ask you about these two affidavits filed out there in the Heiser case in California. Do you remember making those affidavits?

A. Yes.

Q. Who prepared those affidavits, your attorney?

A. No, a lady and an attorney for one of the other de-

fendants, Mr. Calvin Smith. The lawyer, Mr. Beveridge, I think his name was, he made the affidavit wherein the word "home" appears and they delayed it so long, my attorneys were supposed to put it in, they put it in in a hurry and I didn't read it.

Q. What do you mean by these statements, do you mean that that was just where you stayed at, at that time?

A. That particular affidavit, I don't think I read it at all, I should have but I didn't.

Q. At the time you made the affidavit in the case of Heiser v. Woodruff, in an action pending in the District Court of the United States for the Southern District of California, you say you didn't read the affidavits?

A. I didn't read all of them.

Q. Were they read to you?

A. No."

That said defendant Woodruff further testified that he knew said affidavits were being used for the purpose of setting aside the judgment and he knew it was an affidavit to set aside a default judgment. That the Referee at the conclusion of the examination found that "apparently the bankrupt only alleged his place of business had been in Ardmore for the necessary period before filing the petition," and that "if it should be decided that the domicile of the bankrupt was not in Oklahoma during the required period of time it would necessarily follow that his residence for the required period of time could not have been in Oklahoma as the bankrupt was actually in California for the longer portion of the six months preceding the bankruptcy than in any other jurisdiction." And, further, that "during the six months preceding bankruptcy his property in California was of greater value than in Oklahoma" and that "his property in California consisting principally of business property and large stock of antiques, etc. located therein." (five stores known as Woodruff Antique Stores.)

This affiant, plaintiff herein, denies that he and or his attorney have attempted to practice and or, did practice fraud upon the above entitled court and or upon the said Leonard J. Woodruff in procuring the entry of the said judgment and said default judgment, or as defendant Leonard Woodruff or the alleged trustee Jackson alleges, or

otherwise, or at all; denies that any fraud has been committed upon the above entitled Court by plaintiff or his attorney.

M. E. Heiser.

Subscribed and sworn to before me this 16th day of September 1939. Paul Joseph, Notary Public in and for said county and state. (Seal).

(Indorsed)

Received copy of the within Affidavit this 16 day of Sept. 1939.

Cobb, Campbell & Kelley (DH)
Attorney for Leonard Woodruff.

Filed Sept. 18, 1939—11 a.m. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

Heiser Exhibit Q.

Affidavit of Leonard J. Meyberg.

State of California, County of Los Angeles, ss.

Leonard J. Meyberg, being first duly sworn, deposes and says:

That he is attorney of record for plaintiff herein and has been since the commencement of this action. Denies that plaintiff and/or his attorney and/or this affiant have attempted to practice and/or did practice fraud upon the above entitled court and/or upon Leonard J. Woodruff in procuring the entry of said judgment and said default judgment herein, or otherwise, or at all. Denies that any fraud whatever has been practiced upon this court by affiant as attorney for plaintiff, or otherwise, or at all, or by plaintiff.

Leonard J. Meyberg.

Subscribed and sworn to before me this 16th day of Sep

tember, 1939. Paul Joseph, Notary Public in and for said county and state. (Seal)

(Indorsed)

Received copy of the within affidavit this 16 day of Sept. 1939. Cobb, Campbell & Kelley (D. H.) Attorney for Leonard Woodruff.

Filed Sept. 18, 1939, 11 A. M. R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

Heiser Exhibit R.

[Clerk's Minutes.]

At a stated term, to-wit: The September term A. D. 1939, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday the 26th day of September, in the year of our Lord one Thousand Nine Hundred and Thirty-nine.

Present: The Honorable: Geo. Cosgrave, District Judge.

No. 7256-C Law.

This cause coming before the Court at the hour of 11 o'clock A. M. for hearing on (1) motion of M. E. Heiser, plaintiff, for an order striking the notice of motion to vacate judgment, to set aside default, to vacate orders entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff, to permit the filing of an answer by P. M. Jackson, Trustee in Bankruptcy, for Leonard J. Woodruff, and to allow the trustee in bankruptcy for Leonard J. Woodruff, to intervene, filed on behalf of Leonard J. Woodruff and or P. M. Jackson, as trustee, pursuant to notice of motion, etc. filed September 21, 1939; and (2) motion of Leonard J. Woodruff and P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, to vacate judgment, to set aside default, to vacate order entered after judgment, to permit the filing of an answer by and on behalf of Leonard J. Woodruff to

permit the filing of an answer by P. M. Jackson, trustee in bankruptcy, for Leonard J. Woodruff and to allow the trustee in bankruptcy to intervene, pursuant to notice filed September 11, 1939; Leonard J. Meyberg and Paul M. Joseph, Esqs., appearing for the plaintiff; Francis B. Cobb, Esq., of Cobb, Campbell & Kelley, Esqs. appearing for Leonard Woodruff, defendant, and for P. M. Jackson, trustee in bankruptcy; and H. A. Dewing being present as Court Reporter and reporting the testimony and the proceedings:

At 11 o'clock A. M. it is ordered that the cause be, and it hereby is, continued to 2 o'clock P. M. today. At 2:05 o'clock P. M. court reconvenes herein, and all being present as before.

Attorney Cobb argues to the Court. At 2:57 o'clock P.M. Attorney Meyberg argues in reply; the Court makes a statement; and both of said motions are denied.

The Court says that Attorney Meyberg may prepare an order, if he desires, and if not, the minute order will stand as the final order.

Heiser Exhibit S.

Notice of Appeal.

To the Honorable Geo. Cosgrave, Judge of the United States District Court:

P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a bankrupt, and the defendant Leonard Woodruff feeling aggrieved by a decree rendered and entered in the above entitled proceeding in the form of a minute order of June 29, 1939, and a minute order of September 26, 1939, do hereby appeal to the United States Circuit of Appeals for the Ninth Circuit, pursuant to Rule 73, subdivisions (a) and (b) of the Federal Rules of Civil Procedure.

Your petitioners pray that the proper record on appeal, as provided in Rule 75 of the Federal Rules of Civil Pro-

cedure, be docketed, and that this appeal be heard and determined as provided by law.

Dated this 28th day of September, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for Estate of Leonard Woodruff, a Bankrupt.
EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY.
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff.

Copy mailed to Leonard J. Meyberg, Atty for Plf. 9/23/39. E. L. S.

(Endorsed): Filed Sept. 29, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

Heiser Exhibit T.

Appellants' Statement of the Points on Which They Intend to Rely on the Appeal.

To the above named Plaintiff and Appellee, and his Attorney of Record, Leonard J. Meyberg, Esq.

You, and each of you will please take notice that appellants, P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff, do hereby designate the following points on which they intend to rely on their appeal in the above entitled proceeding:

That the Court erred in failing to grant the motion of P. M. Jackson, as Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, and Leonard J. Woodruff to vacate and set aside the default of Leonard J. Woodruff, and the judgment and orders based thereon, for the following reasons:

I.

That summons was not properly served in that:

(a) It was served by the United States Marshal on defendant's son, when E. M. Daniels had been designated by order of January 25, 1939, to serve the same in the place of said United States Marshal.

(b) That the summons was issued on April 21, 1937, and under the Conformity Act then in effect personal service on Leonard Woodruff was required, and actual service was made upon his son.

(c) The form of summons served upon the son of the defendant did not comply with Rule 4 of the Federal Rules on Civil Procedure.

II.

That the Court erred in denying the motion of the Trustee in Bankruptcy to vacate the default and default judgment with the right to intervene and defend the action upon its merits.

III.

That the judgment was prematurely entered in that the complaint was based upon a joint liability on an alleged conspiracy, and judgment was entered as against one defendant prior to trial of the issues with respect to the other defendant who has answered.

IV.

That plaintiff's complaint does not state a cause of action against the defendant Leonard J. Woodruff.

V.

That the Court abused its discretion in not permitting P. M. Jackson, as Trustee in Bankruptcy, the right to defend plaintiff's action on the merits, where a meritorious defense was shown, and the defendant was not personally served with summons.

VI.

That the Court erred in not granting the motion of appellant P. M. Jackson, as Trustee in Bankruptcy, for the reason that the judgment is void as against the trustee in

bankruptcy under Section 67 (d) of the Bankruptcy Act as amended.

Dated this 28th day of September, 1939.

COBB, CAMPBELL & KELLY.
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a Bankrupt, Appellant.

EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY.
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff, Appellant.

(Indorsed) Filed Sept. 29, 1939. R. S. Zimmerman, Clerk. By Edmund L. Smith, Deputy Clerk.

Heiser Exhibit U.

In the United States Circuit Court of Appeals for the Ninth Circuit Court.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al., Defendants. No. 9356.

Appellants' Statement of the Points on Which They Intend to Rely on the Appeal.

To the Honorable Curtis D. Wilbur, Presiding Judge, and the Associate Justices of the Circuit Court of Appeals for the Ninth Circuit:

Pursuant to the provisions of Section 6 of Rule 19 of the Rules and Practice of this court P. M. Jackson, trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and Leonard J. Woodruff, do hereby file with this court the following concise statement of the points on which they intend to rely on this appeal.

I.

That the Court erred and abused its discretion in failing to grant the motion of P. M. Jackson, as trustee in bankruptcy for the estate of Leonard J. Woodruff, a bankrupt, and Leonard J. Woodruff, to vacate and set aside the default of Leonard J. Woodruff and the judgment and orders based thereon under Rule 60B of the Federal Rules of Civil Procedure and permit the filing of an answer on the merits.

II.

That the Court was without jurisdiction as to the defendant Woodruff to enter a default judgment in that summons was not properly served.

(a) It was served by the Marshal on defendant's son, when E. M. Daniels had been designated by order of January 25, 1939, to serve the same in the place of said Marshal.

(b) That the alias summons was issued on April 21, 1937, and under the Conformity Act then in effect personal service on Leonard Woodruff was required.

(c) The form of summons served upon the defendant did not comply with Rule 4 of the Federal Rules on Civil Procedure.

III.

That plaintiff's complaint does not state a cause of action against the defendant Leonard J. Woodruff.

IV.

That the Court erred in not granting the motion of appellant P. M. Jackson for the reason that the judgment is void as against said trustee under section 67 (d) of the Bankruptcy Act as amended.

V.

The Court erred in opening the case after judgment, for the limited purpose of ascertaining values of the property

involved, to the exclusion of all other defenses on the merits.

Dated this 3rd day of November, 1939.

COBB, CAMPBELL & KELLEY,
By FRANCIS B. COBB,
Attorneys for P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard Woodruff, a Bankrupt, Appellant.
EDWARD FITZPATRICK and COBB, CAMPBELL & KELLEY,
By EDWARD FITZPATRICK,
Attorneys for Leonard Woodruff, Appellant.

(Endorsed) Appellant's Statement of the points on which they intend to rely on the appeal. Filed November 4, 1939. Paul P. O'Brien, Clerk.

A True Copy. Attest: November 8, 1940. Paul P. O'Brien, Clerk. By Frank H. Schmid, Deputy Clerk.

Heiser Exhibit V.

In the United States Circuit Court of Appeals for the Ninth Circuit.

P. M. Jackson, trustee in bankruptcy of the estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee. No. 9356. Apr. 30, 1940.

Appeal from the District Court of the United States for the Southern District of California, Central Division.

Before Denham, Mathews and Stephens, Circuit Judges.

Mathews, Circuit Judge:

This appeal is from (1) an order which, on June 29, 1939, refused to modify a default judgment in an action for damages for conversion of property and (2) an order which, on September 26, 1939, denied a motion to vacate the judgment, set aside the entry of default and permit answers to be filed.

The action was brought by appellee, M. E. Heiser, against Leonard Woodruff and others in the District Court of the United States for the Southern District of California. Appellee is a British subject. Woodruff is a citizen of California and a resident of the Southern District thereof. One of Woodruff's co-defendants is a citizen of Nevada. The others are citizens of California. The amount in controversy exceeded, exclusive of interest and costs, the sum of $3,000. The District Court had jurisdiction in the action.

The action was commenced on July 11, 1935. Summons was issued on that day, but, being unable to find the defendants, the marshal returned that summons unserved. Another summons was isued on April 21, 1937. On January 25, 1939, E. M. Daniels was specially appointed by the court to serve the summons and complaint on Woodruff, but Daniels never made such service. The marshal, on January 31, 1939, did make such service by leaving copies of the summons and complaint at Woodruff's dwelling house and usual place of abode with a person of suitable age and discretion then residing therein.[2]

On February 23, 1939, it appearing by affidavit and otherwise that Woodruff had failed to plead or otherwise defend, the clerk entered his default.[3] Thereafter appellee applied to the court for a judgment. The court, on March 20, 1939, conducted a hearing to determine the amount of damages and, at the conclusion thereof, entered judgment against Woodruff for $164,000, with interest and costs.[4] From that judgment, no appeal was taken.

On March 29, 1939, Woodruff filed a motion to vacate the judgment, set aside the entry of default and permit him to answer. The motion was heard on April 10, 1939, and, by an order entered on June 8, 1939, was denied. From that order, no appeal was taken.

On May 25, 1939, appellee and Woodruff stipulated in open court that the court might hear evidence as to the value of the converted property, and that, if the value there

[2] Federal Rules of Civil Procedure, Rule 4(c).
[3] Id., Rule 4(c), (d) (1).
[4] Id., Rule 55(a).
[4] Id., Rule 55(b) (2).

of was found to be less than the amount ($164,000) awarded by the judgment, the judgment might be modified accordingly. On June 29, 1939, a hearing was had, pursuant to the stipulation. Both parties (appellee and Woodruff) appeared and participated in the hearing. The court found that the value of the property was the amount awarded by the judgment. Accordingly, by an order entered on June 29, 1939, the court refused to modify the judgment.

On July 5, 1939, Woodruff was adjudged a bankrupt. On July 20, 1939, P. M. Jackson was appointed and qualified as trustee in bankruptcy of Woodruff's estate. On September 26, 1939, pursuant to written notice theretofore served and filed, Jackson and Woodruff (hereafter called appellants) moved the court to vacate the judgment in the law action, set aside the entry of default and permit the filing of answers by appellants. The motion was heard and, by an order entered on September 26, 1939, was denied. From that order and the order of June 29, 1939, this appeal was taken on September 29, 1939.

The order of June 29, 1939, was not a final decision, within the meaning of § 128(a) of the Judicial Code, 28 U.S.C.A. § 225(a), and was not appealable. Republic Supply Co. v. Richfield Oil Co., 9 Cir., 74 F.2d 909, 910; Benson v. United States, 9 Cir. 93 F.2d 749, 751.

A claimed ground of appellents' motion of September 26, 1939, was that the judgment was obtained without valid service of process. Another claimed ground of the motion was that the judgment was obtained by fraud. Thus, by their motion, appellants instituted what was, in effect, an independent action or proceeding. Hence, the order of September 26, 1939, was a final decision, within the meaning of § 128(a) of the Judicial Code, 28 U.S.C.A. § 225(a), and was appealable. Stevirnac Oil Co. v. Dittman, 245 U.S. 210, 214, 216; Rust v. United Waterworks Co., 8 Cir., 70 F. 129, 132.

The District Court properly refused to vacate the judgment as having been obtained without valid service of process. For, as previously shown, service was made on January 31, 1939, in accordance with Rule 4 of the Federal

Rules of Civil Procedure, then in effect, and was, we think, valid service. Furthermore, even if not validly served with process, Woodruff, by entering into the stipulation of May 25, 1939, and by participating in the hearing of June 29, 1939, waived such service and voluntarily submitted himself to the jurisdiction of the court.

The charge that the judgment was obtained by fraud was denied and not proved. That ground of appellants' motion appears to have been abandoned. Other claimed grounds of the motion were that the judgment was prematurely entered and was otherwise erroneous; that the complaint did not state a cause of action and was otherwise defective; and that the complaint showed on its face that the action was barred. These were matters which, if true, might have been urged as defenses or, if the judgment had been appealed from, as grounds for reversal. They were not grounds on which, without more, the court rendering the judgment could properly vacate it.

As a further (and final) ground of their motion, appellants stated that they, Jackson and Woodruff, had a good defense to the action, but were prevented from presenting it by reason of fraud, accident, surprise and excusable neglect. The statement that Jackson had a defense to the action and was prevented from presenting it was obviously untrue, for he was not a party to the action. As to Woodruff, the court apparently disbelieved the statement and disbelieved the evidence, if any, tending to support it. In this, we cannot say that the court erred; much less that it abused its discretion.

The appeal, in so far as it is or purports to be an appeal from the order of June 29, 1939, is dismissed.

The order of September 26, 1939, is affirmed.

(Endorsed) Opinion. Filed Apr. 30, 1940. Paul P. O'Brien, Clerk.

A True Copy. Attest: November 8, 1940. Paul P. O'Brien, Clerk. By Frank H. Schmid, Deputy Clerk.

Heiser Exhibit W.

[Mandate.]

United States of America, ss.

(Seal)

The President of the United States of America.

To the Honorable the Judges of the District Court of the United States for the Southern District of California, Central Division—Greeting:

Whereas, lately in the District Court of the United States for the Southern District of California, Central Division, before you, or some of you, in cause between M. E. Heiser, plaintiff, and Leonard Woodruff, et al., defendants, No. 7256-C an Order was duly entered on the 29th day of June, 1939, and an order was duly entered on the 26th day of September, 1939, which said orders are of record and fully set out in said cause in the office of the clerk of the said District Court, to which record reference is hereby made and the same is hereby expressly made a part hereof, and as by the inspection of the Transcript of the Record of the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of an appeal prosecuted by P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a bankrupt, and Leonard Woodruff, as appellants, against M. E. Heiser, as appellee, agreeably to the Act of Congress in such cases made and provided, fully and at large appears;

And Whereas, on the 8th day of April in the year of our Lord One Thousand Nine Hundred and Forty and said cause came on to be heard before the said Circuit Court of Appeals, on the said Transcript of the Record, and was duly argued and submitted:

On Consideration Whereof, it is now here ordered and adjudged by this court, that the appeal, insofar as it is or purports to be an appeal from the order of the said District Court of June 29, 1939, is dismissed and the order of the said District Court of September 26, 1939, in this cause be, and hereby is affirmed, with costs in favor of the appellee and against the appellants.

It is further ordered and adjudged by this Court that the appellee recover against the appellants for his costs herein expended, and have execution therefor.

(April 30, 1940.)

You, Therefore, Are Hereby Commanded, That such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said appeals notwithstanding.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, the 31st day of May in the year of our Lord One Thousand Nine Hundred and Forty.

Amount of costs allowed and taxed in favor of the appellee and against the appellants as per annexed bill of items, taxed in detail: $20.00. Paul P. O'Brien, Clerk.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed)

No. 9356. United States Circuit Court of Appeals for the Ninth Circuit. P. M. Jackson, etc., et al., vs. M. E. Heiser.

Mandate.

No. 7256-C U. S. District Court, Southern District of California Heiser v. Woodruff.

Filed June 19, 1940, R. S. Zimmerman, Clerk. By Francis E. Cross, Deputy Clerk.

OBJECTORS' EXHIBITS.

[Objectors' exhibit 1, notice of unsecured property taxes etc., is identical with objectors' exhibit QQ, which appears at page 1113.]

Objectors' Exhibit 2.

[Prospectus of Golden State Gem Company of Nevada.]

In order to have a positive and assured source of raw materials and to more fully enjoy the profits derived from direct production, cutting, polishing and marketing Mother Earth's collection of gems, the Golden State Gem Company of Nevada was organized August 11, 1928, and qualified in California August 27, 1928, with a Capital Stock of 500,000 non par shares, 350,000 being common and 150,000 preferred with cumulative annual dividends of eighty cents per share.

The Company secured the control of the mining output of what they believe to be eighty percent of the blue sapphire production of the world and some exceptionally valuable proven diamond properties and claims of great potentiality. It has taken three years of intensive work to accomplish these far reaching results thru purchase of physical properties, by acquisition of stock, by consolidating and merging producing properties and companies and by long contract on the total output of large producers.

The Company has acquired 98% of the stock of the old Golden State Gem Company of California and there is in process of transfer from Australia, 10,000 preference shares out of 23,750 and 2,000 ordinary (common) shares out of 6,250 (40% of the total) of the stock of the Heiser Burmah Sapphires, Ltd. of Australia and a forty year contract on their entire mining output of sapphires and zircons in Sapphire Valley, New South Wales, Australia. That Company now controls sixteen miles of shallow channel gravels which have been tested thoroly by eminent geologists, practical sapphire miners and owners of years standing. From these

tests and estimates, and from actual washing of thousands of yards of gravel, the managing director of the Heiser Burmah Sapphires, Ltd., Morrie E. Heiser, prominently identified with sapphire mining for many years and recognized as an authority, estimates that the gravels under their control contain $30,000,000. of sapphires.

It is proposed to erect a dam and by short tunnels, cuts and pipe line, totaling twenty miles, to supply ample water to hydraulic these ancient Tertiary gravels for their valuable blue and yellow sapphires and zircons, much in the same way as hundreds of millions of dollars of gold were hydrauliced from the Tertiary gravels of California in the early eighties. It is estimated that $175,000.00 will amply take care of dam, tunnels, pipe line and hydraulic equipment and will furnish the cheapest known method of handling gravels in quantities, and should yield an almost unbelievable profit from these exposed, tested, proven sources. Thirty thousand (30,000) ounces of commercial sapphires mined from these gravels by crude methods were received by the Golden State Gem Company of Nevada in Los Angeles and were deposited in the vaults of the United States National Bank, Los Angeles, August 16, 1928.

The diamond properties, some forty-five miles from the sapphire mines, are known as the Monte Christo Diamond Mines, which with an adjoining holding have already produced over 220,000 carats of diamonds. The diamonds are found in the gravels of ancient (Tertiary) river channels with from five to thirty ft. thickness of gravels underlying a basaltic cap of from ten to three hundred feet thickness. The accompanying topaz, sapphires, zircons, tourmalines, and stream tin (up to 15 pounds per cubic yard) should take care of all overhead for hydraulicing methods. Edward F. Pittman, Government Geologist, reporting on the Diamond Fields in his exhaustive report on the Mineral Resources of New South Wales, Australia, says: "The richest claim, known as the Monte Christo, is understood to have been purchased recently . . . Examples of straight mine run showed 2285 diamonds recovered weighing 457½ carats @ £469.: — 90,274 carats @ £49,871" — which translated means $2.77 per carat!

It is proposed, at an estimated cost of $200,000, to dam a nearby river and by short tunnels and pipe line, some eighteen miles long, to hydraulic the diamond bearing gravels in much the same way as the sapphires. Hand methods have demonstrated that thousands of diamonds have been mined from the Monte Christo at an average cost of less than $3.00 per carat. The hydraulicing should not only give a yield at a much less cost, but should assure a continuous washing of gravels of great yardage with attendant larger number of diamonds recovered per unit of time. The water rights and dam sites have been secured. There is ample fall to take care of debris, no debris laws, but ideal canyons for rentention should there ever be any such laws. Full cooperation of the Australian Government has been assured.

The Company proposes to build a new and greatly enlarged lapidary plant in Los Angeles. The very latest design of high speed gem cutting machines have been ordered built to special specifications. The Australian lapidary plant of the Heiser Burmah Sapphires, Ltd., in cooperation with the government, has employed World War veterans, who have lost an arm or leg and the Golden State Gem Company proposes to bring some of these men to Los Angeles to teach some of Uncle Sam's World War veterans in the same condition to cut and polish stones in its new plant. It is to be the last word in equipment for cutting and polishing precious stones and gem work. The cutting of stones here will save 20% custom duty to the Company on all high class stones it cuts and sells in the United States.

Walter Calvin Smith, as a master in all classes of gem work, a recognized authority and connoisseur of years standing, president of the old Golden State Gem Company of California, will be in charge of the enlarged plant. Men who have been with the old company from five to eighteen years are dependable, interested lieutenants to Mr. Smith.

While the profits on diamonds, sapphires and opals should more than satisfy any man's expectations, the established business of twenty years has proven that a handsome and steady profit exists in cutting and polishing rubies, zircons, kunzites, tourmalines, peridot, topaz, aqua marine, lapis lazuli, spinel, garnets, amethysts, emeralds, moonstones,

sardonyx, bloodstones, turquoise, jade, agate, malachite, azurite, chrysophrase, chrysacola, coral, petrified wood, variscite, hyacinth and other gems.

The Secretary of the Company left for Europe on the 19th of the month to close a contract which has been proposed to the Company for $4,000,000.00 worth of gem sapphires, negotiations having been carried on for the last three months for a twenty-year contract with a minimum of $200,000. per year, which alone should yield more than an ample profit to take care of all preferred stock dividends.

Appraisal Engineer, John P. Kennedy, appraising for the State of California, August, 1926, made a report on the old Golden State Gem Company of California, which showed $3600.00 equipment and merchandise on hand for every dollar originally invested at the foundation of the business some eighteen years before, naturally no mention being made of thousands of dollars of profits taken out of the business during those fruitful years. With contracts on production and ownership of properties and hydraulicing of great quantities of diamond and sapphire producing gravels, would it be an Arabian Night's Dream to think that that record of eighteen years might be equaled in eighteen months, or would it be just another case of mass production?

Estimated Requirements for Increased Production.

Dam and Pipe Lines for Diamond Mine	$200,000.00
Purchasing of gems of all classes	100,000.00
Improvement to Lapidary plant in Los Angeles	50,000.00
Payroll	50,000.00
Cutting of Sapphires	100,000.00
Sales, overhead and unforseen contingencies	100,000.00
Steam shovels and mining equipment to be furnished under contract with Heiser-Burmah Sapphires, Ltd.	50,000.00
Payroll for that company	50,000.00
Dam and Pipeline for Sapphire Mines	175,000.00
Prospecting under contract with Australian American Gem Mining Syndicate	100,000.00
Total	$975,000.00

Objectors' Exhibit 3.

C/o. Bank of Australasia, London.

C/o. C. H. Voss, Esq., Australian Commonwealth Government Office, 6, rue Halevy, Paris.

Mr. Calvin Smith and Mr. Barstow, Golden State Gem Company, 726 San Pedro Street, Los Angeles. Etats Unis.

18th October, 1928.

Dear Sirs: I arrived in London and the buyers were there to meet me rearing to go (as our friend Rogers would say)! Unfortunately my registered parcels were not there on time, and there was a mix up with some of the Queensland stuff. Luckily I had my samples from America with me, which saved the day.

The quality was very pleasing to them and, after staying there five days, they returned to Paris and Germany. I waited in London until my registered packages arrived, which were beautiful in colour, and now am in Paris (C/o. Australian Commissioner, Paris, or old address in London, as above).

The French people are over-enthused about the colour from our mines, and I haven't the slightest doubt that I will, within the next three weeks, close on a contract for over five million dollars for our rough sapphires over a period of twenty years.

Our rough diamonds are greatly sought after here, and I could take orders for three or four million dollars a year without any trouble from the most responsible houses of France.

You never saw so much enthusiasm displayed in all your life as by these Frenchmen, with both hands and one head going at the same time, when they see a parcel of rough sapphires or diamonds. There is not the slightest doubt that the contracts can be closed here and to our entire satisfaction. I also believe that I can get them to take an option over some of our stock as spoken of by Coleman and Ritz of New York. This, I am sure, can be brought about to our entire satisfaction within the next six weeks.

also the prices which we require for our rough. It is only a matter of time to co lete it all. As you know the French do not think or act as quickly as the English or American people, so you must allow a little more time.

That is my end; now for yours.

Your cable stated that you had quite a lot of stuff possibly sold (or was it sold?). If it was not sold I hope it is by now.

I was in hopes of having a cable from you to say that you had sent at least £1,000 to Australia long before this. We must get money to Australia to have the other dredge moved to enable us to get the supplies on their way, because these people in Europe cannot be played with, and if we are going to take contracts we must execute them. To execute contracts you must have machinery, operating and money to pay pay-rolls, so that I hope that if you haven't sent £1,000 over by now you will do so on receipt of this, as I feel positive that the monies promised while I was there would have got there by now.

In this mail I am sending to the Golden State Gem Company the two thousand shares of the ordinary stock of the Heiser Burmah Sapphire Ltd. I am sorry that I did not send these from London, Calvin, but I had a stenographer there and she could not read her own notes—you never saw such a mess in your life—and I know you will pardon the delay because I have been under pressure ever since I got to Europe, with a frightful cold to make things worse!

Has Mr. Rogers sold any stock?

Give my kindest regards to the Scotch ~~Army~~ and her lieutenant. I hope she is keeping you well under the smoke screen! If you see Leonard give him my personal regards, and also any of our mutual friends at Hollywood.

I hope that you are not neglecting my teddy bears, and that they are getting their regular gum leaves. You must not neglect them, Calvin, as regards both leaves and water, as it is Winter there now and they must be fed regularly with young tips. The females should be breeding. Is Bobby's eye better? I hope you are looking after him and

taking care of them generally. They are one of our big assets, as you know.

I am trying to bring the conditions about here in Europe so that the Golden State Gem Company would be the agents for the cut sapphire in America from these different French firms, and am also trying to arrange for an agency for cut *emerald* and diamonds from this side.

I sincerely hope that you have sent me the samples of Kunzite, Turquoise and Taumoline as I previously asked for.

I want to emphasize the fact to you that you must acquire that emerald mine out in Cal, and do not fail. There is a big market for that small stuff here.

Please sit down and write me particulars, either you-Calvin, or Mr. Barstow, or our Secretary, of how much stock you have sold and how much cash you have in the treasury, and how much stock you have prospective buyers for.

I am sorry I did not write you two earlier but my work has been continuous since I got off the boat, and please, Calvin and Mr. Barstow, excuse me not writing to you separately but I am under pressure and for the time being I hope this will suffice—besides which English Stenographers in Paris are like teeth in a black hen.

With my very kindest regards to both of you, I am

Yours Truly,

MORRIE HEISER.

Objectors' Exhibit 4.

In the District Court of the United States for the Eastern District of Oklahoma.

In the Matter of Leonard J. Woodruff, Bankrupt. No. 7623.

Affidavit of Francis B. Cobb.

State of California, County of Los Angeles, ss.

FRANCIS B. COBB, being first duly sworn, deposes and says:

That he is an attorney admitted to practice before all of the Federal and State courts in California, and was employed by P. M. Jackson, Trustee in Bankruptcy in the above entitled matter in September, 1939 to make a motion on behalf of the trustee in the above entitled proceeding to set aside a default judgment which had been procured by M. E. Heiser against Leonard J. Woodruff in an action filed in the District Court of the United States for the Southern District of California, Central Division, in Case No. 7256-C.

That the printed record on appeal of the United States Circuit Court of Appeals for the Ninth Circuit in case No. 9356, entitled "P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants, vs. M. E. Heiser, Appellee", is a true copy of the documents on file in said case No. 7256 in the District Court of the United States for the Southern District of California, Central Division.

That in addition to the documents contained in said transcript of record, affiant prepared a document entitled "Affidavit of Francis B. Cobb in Support of Motion to Set Aside Judgment", a true copy of which is attached hereto and marked "Exhibit A".

That on the hearing of said motion on September 26, 1939, before Honorable Geo. Cosgrave, District Judge, affiant asked for the privilege of filing said affidavit in support of the motion to set aside default, and judge asked affiant to what the same related, and affiant stated that it contained a summary of proceedings had before the Commissioner of Corporations, wherein M. E. Heiser and other witnesses testified concerning certain gems and sapphires, and the court stated that he would decline to allow affiant to file said affidavit.

That affiant had prepared in advance of said argument a document entitled "Points and Authorities in Support of Motion Under Rule 60B of the Rules of Civil Procedure for the District *Courts* of the United States and Under Rule 62 of this Court", a copy of which is attached hereto and marked "Exhibit B". The original of said document was filed with the United States District Court for the Southern District of California, Central Division in Case No. 7256-C.

That affiant proceeded to open the argument in respect to said matter, and argued each point of law contained in said "Exhibit B", and approximately the same argument used in said Points and Authorities, down to the sub-heading "Inclusion of Interest in the Judgment is Erroneous" (page 12 of Exhibit B), at which time the Honorable Geo. Cosgrave interrupted affiant and stated that he desired to hear argument from Mr. Meyberg. That upon Mr. Meyberg arguing that the Court had considered evidence for several days on the question of values and had made a just and proper judgment, the court interrupted the argument and made the following statements and order, which are truly set forth in the "Reporter's Transcript of Ruling and Remarks of the Court on Motion to Vacate Judgment and Set Aside Default", a true copy of which is attached hereto and marked "Exhibit C".

That thereafter affiant prepared a Notice of Appeal and took proceedings, as is more particularly shown in the transcript hereinabove referred to.

That affiant recalls no stipulation being made in connection with the matter, or any other proof or argument had at said proceedings, other than as hereinabove set forth.

FRANCIS B. COBB.

Subscribed and sworn to before me this 18th day of November, 1940. Emma W. George, Notary Public in and for the County of Los Angeles, State of California.

Exhibit A.

In the District Court of the United States for the Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al., Defendants. No. 7256-C.

Affidavit of Francis B. Cobb in Support of Motion to Set Aside Judgment.

State of California, County of Los Angeles, ss.

FRANCIS B. COBB, being first duly sworn, deposes and says:

That a motion has been filed by P. M. Jackson in the above entitled matter to set aside a default judgment entered against Leonard Woodruff.

That on Monday, September 18th, 1939, affiant received from P. M. Jackson a reporter's transcript in a hearing "In the matter of the investigation and examination of the International Gems" held before the Department of Investment, Division of Corporations of the State of California, in case No. 65704-LA. That said transcript in said proceeding was not discovered or known until after the previous hearing on the motion to set aside default judgment entered in the above entitled proceeding. That the plaintiff, M. E. Heiser, was represented in said proceeding by Harry A. Goldman as his attorney who cross-examined witnesses.

That attached hereto and marked "Exhibit A" is a copy of an exhibit offered and received in said proceeding, and attached hereto and marked "Exhibit B" is the testimony of Jefferson James Graves, whose testimony was given in said proceeding. That said testimony taken in said proceeding, as it appears in the transcript at pages 43 to 53, shows that the commercial sapphires, which is the subject matter of the above entitled action, were transferred to the Golden State Gem Co. of Nevada, and that M. E. Heiser was secretary of said company and was issued fifty percent (50%) of the stock of said company in exchange for assets and has at all times since said date had the stock records of said company.

That it further appears on page 81 of said transcript that M. E. Heiser returned from Europe in 1929 or 1930, after the bankruptcy of said company, and that he and defendant Walter Calvin Smith went to Houston, Texas and attempted to negotiate a gem deal with one Mrs. Jesperson.

That said transcript contains further testimony by M. E. Heiser as to his travels and business trips and transactions which are in conflict with his testimony heretofore given in the above entitled proceeding and in respect to his complaint on file herein.

That affiant will, on behalf of P. M. Jackson, as trustee for the estate of Leonard Woodruff, move the above en-

titled Court at the continued hearing of the motion of said P. M. Jackson on September 25th, 1939, to receive said transcript in connection with said motion.

FRANCIS B. COBB.

Subscribed and sworn to before me this 21st day of September, 1939. Emma W. George, Notary Public in and for the County of Los Angeles, State of California.

Exhibit A.

Consulate General of the United States of America, City of Paris, Republic of France, ss.

I, ALBERT LE QUINTREE, living at 233, rue du Fauborg Saint-Honore, Paris, France, depose and say,

That, as the Gerant of the International Trading Co., resident in Paris, I corresponded with Jefferson J. Graves, the Gerant of the above named company, residing in San Francisco, U. S. A., on the subject of handling for one, Maurice Heiser, the sale of sapphires in France and Europe; the above correspondence taking place in the year 1928.

That, in connection with the sale of sapphires I consulted with Marc Bietrix, residing at 7, rue Notre-Dame de Lorette, Paris; that the said Marc Bietrix is a jeweler, and dealer in precious stones and that in the name of the International Trading Company, 5 Boulevard de Strasbourg, Paris, I entered into an agreement with him whereby he was to receive one-third of all commissions on sales of sapphires or other precious stones for the account of Maurice Heiser or associated companies.

That, it was agreed that the above menfioned Jefferson J. Graves should come to Europe, with Maurice Heiser, who was then in California, for the purpose of facilitating the sale of a large parcel of *sapphire* the said Heiser claimed to have in the Safe Deposit Vaults of the Bank of Australia in London and additional parcels which the said Heiser also claimed to be en route from Australia.

That, in accordance with the above understanding the said Graves came to Paris and that on or about the fifth

of October 1928, I accompanied him to London where we met by appointment, the above mentioned Bietrix and one, Monsieur Poncet, Gem Cutter and Expert, of Paris; that Messrs. Bietrix and Poncet had come to London at my request, to see the display of sapphires and opals of Heiser, with the intention of buying any suitable lots of stones.

That, we four, that is to say, Messrs. Bietrix, Poncet, Graves and myself, met the aforesaid Heiser and went to the Vaults of the Bank, where we met the Bank's Manager and where the parcels, cans etc. were opened. There were also present Mrs. Heiser and if I remember correctly a Mr David Hack of London. That Heiser's display was most disappointing; that all of the stones he showed were of poor quality and small; that Heiser finally admitted that they had all been picked over many times in America and that Bietrix became very angry as we had promised Poncet that he would be surprised at the wonderful display and finally in exasperation cried out, "Show me one big stone, only one, one, one."

That, on being questioned about the opal, Heiser said that they had no way to cut opal in Australia, so that he had to drop it; that immediately thereafter Poncet found pieces of opal shown us by Heiser nicely sawed by an expert testing for the best specimens.

That, contrary to the statements made by Heiser we found that he did not control the Australian output, but that Treyfuss of London represented the Queensland Government and that he had large quantities of all sizes for sale.

That, Heiser assured us that in the nine packages arriving from Australia that we would see first grade sapphire, with many large stones (big as walnuts) and colors that could not be told from real Burman; that he also alleged that he had been selling to Indian Merchants Australian sapphire, which he called Burmah Blues and that the Indian merchants were then selling the same stones in France as true Burmah.

That, Bietrix and I were obliged to return to Paris so that we arranged with Heiser to bring his parcels there; that he promised to do so and to open the packages in our

presence; that he came to Paris with the parcels two of which were marked first grade, one of over a thousand cut stones so badly done that they were not acceptable and at a cost he said of about Two Dollars a carat, when first class work here costs forty cents a carat and the other packages lower grades. That Bietrix immediately sold what good stone he had for about Twelve Hundred Dollars.

That, Heiser tried to get us to form a French Company for the purpose of handling his output and that he wished this company listed in the Bourse for the purpose of making what he called a stock play; that his showing had been so poor that we lost confidence in him and all his statements and were unwilling to proceed further without definite guarantees that he would suppply sapphire of the quality and size demanded by our buyers, three of whom were willing to contract for $60,000.00 worth of sapphire each.

That, Heiser then tried to get us to form a company to buy all the sapphire of the Queensland Government, then with Treyfuss in London, to in this way he said control the market as we would have his supply. That at no time did or has Heiser shown us sapphire either in quality or quantity sufficient to control the market or to warrant our acting as his selling agent.

That, in an endeavor to instill confidence he told us that he had many influential people interested with him and recited that he had sold a large block of stock to Mrs. Loller and another to Mr. Loller.

That, in the office of Bietrix, Heiser showed a contract drawn in Los Angeles and which he alleged that Graves had seen and agreed to sign; that upon Graves telling him that he had never seen or heard of the contract he insisted that he had; that upon Graves again assuring him that he had never seen or heard of it he again insisted whereupon Graves told him that he was a liar. That he then tore up the contract and finally apologized saying that he thought Graves had seen it.

That, in the year 1929, at 6519 Selma Avenue, Hollywood, California, I met a Mr. Smith, who had been connected with Heiser and the Golden Gate Gem Company; that there was

present at this interview Jefferson J. Graves and his wife; that the said Smith told us that Mrs. Loller had given a note for Thirty Thousand Dollars to Heiser for the purchase of stock in the Golden Gate Gem Company; that he further stated that Heiser had not left this note in Los Angeles, but had taken it with him; that he further stated that it was not right as the stock was of no value and that Heiser knew it to be of no value; that Graves expressed *doub* and surprise that his mother would sign a note in any such amount and said that he could not believe it; that Smith assured him that it was the fact, but said it was strange that Heiser took the note with him, however that as he was treasurer of the Company he could do so. That upon my telling Smith that I had seen Heiser in a hotel on Shaftesbury Ave., London, where he had a large package of shares in the Golden Gate Gem Company that he was trying to sell, he replied, "Heiser had not the right to do that".

And That, due to the statements made by Heiser, the International Trading Company, *it's* Gerants, (myself and Graves) and Mr. Bietrix were all put to the loss of considerable sums and valuable time.

.....

A. LeQuintree.

Paris le 11 Janvier 1933 A. LeQuintree ..... Moins.

.....

.....

Subscribed and sworn to before me this 18th day of January, 1933. Maurice Pasquet, Vice-Consul of the United States of America at Paris, France. (Seal).

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Amer American eneral
Foreign Service
$2.00 Fee stamp
Paris, France.
Frs. 51.40 233 S-Honore

Exhibit B.

JEFFERSON JAMES GRAVES, Called as a Witness, Having been first duly sworn by Mr. Kelley, testified as follows:

Mr. Kelley: Your name, please?

A. My full name?

Mr. Kelley: Yes.

A. Jefferson James Graves.

Mr. Kelley: Your address?

A. 890 Bush Street, San Francisco.

Mr. Kelley: All right.

Mr. Metzler: Do you know Mr. M. E. Heiser?

A. I do.

Q. When did you first meet him?

A. Either in the latter part of 1919 or the first part of January, 1920.

Q. Did you have business transactions with Mr. Heiser subsequent to that and particularly in 1928?

A. I did.

Q. And that involved a trip by yourself to England?

A. Yes.

Q. State to the Commissioner in your own words exactly what happened and any conversations you had with Mr. Heiser at that time. I think it will expedite matters if you will just tell the story.

A. Mr. Heiser came to me—Do you want the dates?

Mr. Kelley: Yes, if you can identify them rapidly.

A. Mr. Heiser came to me in the Spring of 1928. The appointment was made through my mother—

Mr. Metzler: Your mother's name?

A. Maude J. Loller—who told me that Mr. Heiser had a large quantity of sapphires and opals and that she believed through my connections in France they could be disposed of advantageously. I met Mr. Heiser and had several conversations with him and he showed me a letter from a Mr. Corey in Australia addressed to Mr. Ira Clark saying that Corey & Company had financed Mr. Heiser in mining properties there. I arranged a meeting with Mr. Clark and called on him and he told me that he had known Mr. Corey since he was a boy and had perfect confidence in

his statements and believed that Mr. Heiser's statements were correct. I subsequently wired my associate in Paris—I own one-half of a French company—and I cabled Mr. LeQuintrec to ask him if he believed Mr. Marc Bietrix could arange for the sale of a large quantity of sapphires. He cabled back and stated they could if it was the quality and size needed on the market. In a letter of April 14, 1928, I wrote him telling him that Mr. Heiser had stated to me that he had 5070 ounces of pure blue sapphire on the way to London. Mr. Heiser also stated to me as evidenced by my letter to Mr. LeQuintrec of April 18th that he had several stones in India and that his collections were then sent to London as pure Indian stones. He claimed he had contracts with the Queensland government and through them gained control of 80 per cent of the world's sapphire production. He stated he wanted $60.00 an ounce for the best blues and we would have to make our profit on top of that. He said he had a parcel in London. After much discussion I sent over a small parcel of stones which Mr. Heiser stated were not for size but simply for color. Mr. LeQuintrec replied that the color was nice but they were so small it was impossible to tell very much about them. Finally, after much discussion I agreed to go over there with Mr. Heiser, or to meet him there, as he did not speak French and he had stated that France was the color gem market of the world. I left here, I believe, on the 17th of September, 1928. I think that was the date:—yes. I met Mr. Heiser with a Mr. Calvin Smith in New York but he had arranged to *sale* on a different ship. I went to Paris where I met Mr. LeQuintrec. From there we went to London, arriving October 4th.

Q. By "we" do you mean Mr. LeQuintrec?

A. Yes. And myself.

Q. And Mr. Bietrix?

A. No. We met Mr. Heiser and discussed the matter with him. He had some samples with him that he did not wish to sell and that day, October 4th, we met him and I wrote a letter to my wife in which I said I was doubtful about Mr. Heiser's ability to produce the stones he said he had because he talked principally of forming a company which he wished to call the International Gem Company

and that he would like to have the company formed, one in France and England and Germany and Italy, and in France to have it put on the Bourse.

Q. Did he mention stock play?

A. Yes, he said he would like to get a stock play. On October 5th, Mr. Bietrix, who was a jeweler and merchant of fine stones and also a manufacturer of fine watches, arrived with Mr. Ponet. Mr. Ponet was of the firm of Gruet et Cie, one of the largest gem experts in France on colored stones. We went with Mr. Heiser and arranged an appointment to go to the bank on Saturday, October 6th. We went to the Bank of Australasia on the Strand in London. There we met Mr. Heiser and Mrs. Heiser and the manager of the bank, a Mr. David Hack, a friend of Mr. LeQuintree and also Mr. Bietrix and Mr. Ponet were there and some tin cans and bags were opened in the presence of all of us. After going over them thoroughly the experts were disgusted and said it was nothing but rubbish, that many of the stones had been dried on a wheel. Mr. Bietrix particularly asked to see one large stone such as Mr. Heiser stated he had and he could not show one. He then admitted that this stock had been there for a long time in the bank but that he had other parcels coming from Australia, due any day; and among them would be the finest of pure blue and large stones. Mr. Bietrix and Mr. LeQuintree were so disgusted they went back to Paris. Mr. Ponet had come to London with a large amount of money to buy stones and went to Tryfuss & Company, who are the big dealers in colored stones and sapphires from Australia, and made his purchases there. Mr. Heiser then stayed in London until the stones arrived. Mr. Heiser was to bring the stones to Paris and he promised not to open the bags until he got there. On October 11th we met Mr. Heiser in Paris. He had one parcel which Mr. Bietrix sold for him right away. I think 30 ounces for 35,000 francs, on which he had a brokerage of 10 per cent. My French associates were very much disgusted at his showing and at the expensive trip to London where the exchange was all against them and continually asked him to show more stones, which he was unable to do, but he continually tried to get us to form a French company. He had such a poor showing that we

would not consider anything of the kind. We did, however, tell him if he could produce the sapphire he claimed, that we could sell it and would do so. He never did produce it and never has. I came home, feeling that my French associates did not feel any too kindly toward me, and out about $2500.00 of expense for the trip.

Q. Did Mr. Heiser exhibit to yourself and Mr. LeQuintrec and Mr. Bietrix and Mr. Ponet and the others at the bank in London an agreement for your signature which he stated you would sign?

A. No, he exhibited that in Paris in Mr. Bietrix' office.

Q. What was that agreement?

A. He brought out an agreement, stating I had seen this agreement in Los Angeles and that I had agreed to sign it. As I recall it was an agreement by which the International Trading Company, of which I own one-half—it is a French company—would agree to purchase a certain quantity of these stones. I had never seen the agreement before and so told him and he insisted I had and I told him I had not and he insisted again and I told him in no uncertain terms that I do not care to use in front of the young lady here, that it was not so. He then tore the agreement in half.

Q. You never had seen such an agreement?

A. Never.

Q. Never in Los Angeles?

A. No.

Q. You never agreed to purchase?

A. Never agreed to do anything of the kind. I simply agreed if he furnished the quality and size and quantity of stones that he said that he had, that we would sell them for him and that we had three big firms over there that would take $60,000.00 worth a year.

Q. He never did produce them?

A. He never did produce them.

Q. You mentioned the formation of a company, International Gems, that he wished to form in France?

A. Yes.

Q. And he wanted to sell stock of that company?

A. He wanted us to form this French company. My associates and myself. In Paris. And have it entered on

the Bourse to sell stock, he stated, to develop the mines and, as he put it, he wanted to get a stock play.

Q. Mr. Heiser had business transactions with your mother Mrs. Loller?

A. I am so told.

Q. You do not know of those transactions of your own knowledge? I mean your mother's transactions with him?

A. No.

Q. A suit was commenced against your mother by Mr. Heiser?

A. Yes.

Q. And shortly thereafter I believe your mother died?

A. Right.

Q. And what happened to the suit?

A. An executor of my mother's estate, the suit was transferred and brought against me.

Q. You were substituted as defendant?

A. I was substituted as defendant.

Q. It was tried?

A. Tried in San Francisco.

Q. You are familiar with the action taken?

A. Yes.

Q. Yes, $35,000.00 and interest as evidenced by two notes, one in the sum of $5000.00 and one $30,000.00. The note for $5000.00 was given by my stepfather to my mother, on which she had written "Transferred to M. E. Heiser" and signed her name. The other note was a note signed by my mother for $30,000.00 in favor of Mr. Heiser.

Q. M. E. Heiser?

A. M. E. or Moris. I don't know.

Q. Anyway, Mr. Heiser. What happened to that suit, of your own knowledge?

A. Mr. Oscar Samuels represented us. It was tried in San Francisco and we won the case.

Q. You recovered a judgment against Mr. Heiser?

A. Post costs.

Q. And that has not been paid to date?

A. As far as I know, it has not. Mr. Heiser, I understand, from Mr. Samuels, stated he was unable to pay it as he did not have the funds. Just what arrangement has been made I do not know. I think he agreed to pay half.

Q. Mr. Kelley: That was recently?
A. In the last few months.
Q. Mr. Kelley: Has that judgment become final?
A. Yes.
Q. Mr. Kelley: There has been no appeal?
A. No.
Q. Mr. Kelley: No appeal taken by Mr. Heiser?
A. No.

Mr. Kelley: Do you know the case number?

A. No.

Mr. Kelley: Do you, Mr. Metzler?

Mr. Metzler: No, not yet. I just found out about the finality of the judgment last night.

Mr. Kelley: Through the case number we can find what the record in the court shows.

Mr. Graves: February 23rd and 24th I was on the case and then it was put over.

Mr. Kelley: This year?

A. Yes.

Mr. Metzler: That is the date of the trial?

A. And the 2nd and 3rd and 4th and 5th of March.

Mr. Metzler: I show you a copy of an affidavit. Will you examine that. Is that a correct copy?

A. As far as I can remember. I would like to keep the original.

Q. I would like to introduce this as a copy of the original and have a photostat of the original substituted later, if necessary.

Mr. Kelley: This is a copy of an affidavit dated apparently January 11, 1938, by Albert LeQuintree in Paris, France, and will be entered as Department's Exhibit #13. All right.

Mr. Metzler: Mr. Graves, do you know whether or not any legal action was taken against Mr. Heiser in Paris or in London? Criminal action?

A. Not of my own knowledge. I was told it had been by Mr. Bietrix. Do you wish me to state what he told me?

Mr. Kelley: We would have to substantiate a thing of that kind. That is going rather far afield.

Mr. Metzler: That is all. One further thing. I show you what purports to be a copy of a letter dated November 14, 1928, from Moris Heiser to "My dear Maudie & Will". State what that is.

A. It is a copy of a letter my mother handed to me that she received from Mr. Heiser and "Maudie" is referring to my mother and "Will" to my stepfather.

Q. And the original of that letter, do you know where it is?

A. My correspondence shows I sent it to Mr. LeQuintree. It is probably in our files in Paris.

Q. Did you see the original?

A. Yes, I did. And had this copy made.

Q. And the original was signed by Mr. Heiser?

A. Yes.

Q. I would like to introduce this copy of letter.

Mr. Kelley: Department's Exhibit #14. Is this part of your record? Do you want this back?

A. I think I have another copy of that.

Mr. Kelley: If not, we will be glad to make copies and give this back to you. In order to be certain, we will have a copy made of that and send this back.

Mr. Metzler: Calling your attention to the first sentence in that Letter: "After many interviews in Paris with Lequentric, Beatrix, and Jeff"—Jeff is yourself?

A. Yes.

Q. —"Mr. Beatrix and Lequentric came to the conclusion that on account of the excessive incorporation taxes in Paris, it would be more advantageous to all concerned, if a corporation was formed in California, as the selling corporation, and that corporation to contract with the Golden State Gem Co. of Los Angeles, for 20 years at our prices." That statement as to the conclusion as to the rea-

son for not forming the Paris Company, do you know whether that is true or false?

A. It is not true.

Q. I think that is all.

Mr. Kelley: All right. Thank you very much, Mr. Graves. I think you had better get for the record, Mr. Metzler, a copy of the judgment.

Mr. Metzler: Yes, I will get that into the record.

Mr. Kelley: Let us continue this matter to Los Angeles for about a week.

Department's Exhibit No. 14.

Nov. 14, 1928,

My dear Maudie & Will:

After many interviews in Paris with Lequentric Beatrix, and Jeff. Mr. Beatrix and Lequentric came to the *conclusiong* that on account of the excessive incorporation taxes in Paris, it would be more advantageous to all concerned, if a corporation was formed in Calif, as the selling corporation, and that corporation to contract with the Golden State Gem Co., of Los Angeles, for 20 years at our prices. Unfortunately Jeff had to leave for home before his associates had found what they thought was the best solution to handle the rough gem trade in Europe, so a week after Jeffs departure, they finally decided this the best course to take, especially as the Queensland Government are offering us their entire stocks, which means the control of Queensland gems and practically the whole of N. S. W. this is a very wonderful opportunity for Jeff, but I think it would mean his living in Paris until the selling organization was properly established in Europe.

Mr. Beatrix sold *onr* parcel of seconds (30 ounces) for 35,000 francs for which I allowed them 10%, this was done chiefly for them to try out the markets.

Jeff has Major Mallallie, Mr. Fickett whom I am sure will help and with our assistance he should be able to suc-

cessfully form a company to get all the money he needs to successfully operate his sales organization in Paris.

As you are aware Maudie we have about 25,000 ounces of cheap industrial sapphire in N. Y. if you or Jeff need them for the formation of this corporation, you can have them, and it should enable you to control the selling corporation. These stones are in the Lincoln Vaults, 60 East 42nd St., N. Y. there is a small accumulation of rent on them, but no other incumbrances, so if you need them for the above purpose consider this paragraph a deed of gift.

You know Maudie how anxious I have been for years to get a European connection like you and Jeff have kindly put me in touch with, of course it will take a man like Jeff to handle the french merchants, as he can speak their language, I can't.

I had to go to London to make arrangements about the rough sapphires belonging to the Queensland Gov. and I wrote full particulars about the gems to Mr. Beatrix and Lequentric, because they are offered to me at a greatly reduced price of what they cost.

Mr. Lobree was consuring me about opening a cutting plant in Euin Europe, Maudie this is absurd as you must know.

I was very much worried about you going to the hospital but after hearing from Mrs. Benjamin that it was for gland treatment and did not think it serious I was very much relieved and sincerely hope you are home now enjoying the best there is in life.

Well Bill how are you and how is the Reay Estate going I hope you closed on that big deal you were working on when I left.

The family are all having a lovely time, but think there is no place like California.

Trusting that you are well and hoping to see you soon, and that you were *hally* over the arrival of the new baby and that you will have much happiness from the *leetle* tot, also that Bill is a proud Grandfather, gee Bill I would love

to *sell* you running around about 3:30 a. m. in your little short shirt, nursing the baby.

That large light opal that I said we would give to your Jamie, well we did and then gave it to Mr. Beatrix to carve her figure in it in the Balloon dance, and she was *very* pleased and gave us some of her photos, which I will show you on our return.

Will appreciate getting a cable from Jeff to let me know if he will form the corporation or not as I am under a very heavy expense here and just waiting to hear from him now.

I am cabling to you this week and telling you that the french agents want Jeff to form a company in America and contract with the Golden State Co. for twenty years, at our prices.

There is no douht Maud and Will that the French markets control the sapphire markets for the world and with Jeff's connection there is not the slightest doubt that he can get the best business in Paris for these gems, and I feel the same as the frenchmen that it is better for all concerned, that the company be formed in American, Taxes and many other conditions prevail in France that make it almost impossible.

I would have written to you earlier on this matter but I did not, as it took several weeks before this final decision could be made. Now I sincerely hope Maudie that you can help Jeff to hurry things along, as Australian end are urgently requesting me to return to Australia, and the French merchants need large quantities of large best rough and I have not any more left.

Trusting that this letter finds you in the best of health and enjoying the best

I am

Very Sincerely,

(Signed) Morie Heiser.

Exhibit B:

In the District Court of the United States, Southern District of California, Central Division.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, Walter Calvin Smith, Irving Oreck, J. Coleman, John Lawrence Smith, et al, Defendants. No. 7256-C.

Points and Authorities in Support of Motion Under Rule 60B of the Rules of Civil Procedure for the District Courts of the United States and Under Rule 62 of this Court.

Statement of Facts.

There appears from the files and records of the proceedings herein the following facts:

The complaint was filed July 11, 1935; summons was issued on that date, summons was returned on July 12, 1935; that an alias summons was issued on April 21, 1937; that a petition and affidavit was filed on January 25, 1939, requesting an order permitting one E. M. Daniels to serve the alias summons in the place and stead of the United States *Marshall*. The order was entered by Judge Yankwich January 25, 1939, granting said petition, which order has not been changed or modified and was in effect at the date that the United States *Marshall* served Howard Woodruff at 2446 Inverness Avenue, Los Angeles, California, the son of the defendant, on February 9, 1939. Default was entered on February 23, 1939, and judgment on March 20, 1939. Calvin Smith, one of the defendants, has appeared and answered in the proceeding and the proceeding is still pending as against John T. Coleman and the other defendants. After the entry of the judgment a motion was made by Leonard Woodruff to set aside the default and judgment, and the Court entered an order re-opening same for the purpose of receiving evidence on the question of damages alone and not as to the other defense claimed and asserted by said Leonard Woodruff, and after receiving said evidence entered a minute order permitting said judgment to stand and directing plaintiff's counsel to prepare a final order which has not yet been prepared.

Leonard Woodruff was adjudged a bankrupt by the United States District Court for the Eastern District of Oklahoma on July 5, 1939. P. M. Jackson has been elected trustee of his estate and has presented a motion to set aside said default and judgment and all orders entered after judgment and petition to allow him to intervene and to answer.

Trustee is a Proper Party to Intervene and to Move to Set Aside a Default Judgment.

The trustee is the legal representative of all the creditors in the bankrupt estate and is permitted by the Bankruptcy Act to:

"(b) The Court may order the trustee to enter his appearance and defend any pending suit against the bankrupt." U.S.C.A. Title II Bankruptcy 381-29.

and is vested under Section ..... of the Act:

"Powers (Bankruptcy) which he might have exercised for his own benefit."

The case in point where a trustee has been held to have the right to move to set aside a default judgment is

Nuckolls vs. Bank of California, 10 Cal. (2d) 273 where it is stated:

"The further contention is made by appellants that the court had no judisdiction to entertain the motion of the trustee to set aside the judgment theretofore rendered in said action and to permit said trustee to file an answer in said action under section 473 of the Code of Civil Procedure, or under any other provision of law, for the reason that the judgment as against Carbtree had, upon the dismissal of the appeal of Crabtree, become final, and immune from attack by any person or for any reason whatsoever. Upon the dismissal of Crabtree's appeal, the judgment as between him and the other parties to the action became final, and, as to the parties to said appeal, the judgment was immune from further attack, but the status or effect of that portion of the judgment determining the rights of Crabtree was after such dismissal no different from that of the balance of said judgment determining the rights of

the other parties in said action. The time for an appeal or motion for a new trial had then *expires* and the judgment as a whole had become final. The court had the same jurisdiction to entertain a motion to set aside the judgment determining Crabtree's rights as it had to entertain said motion respecting the other parties to said judgment. The authorities cited by appellants in support of this contention are beside the mark as they are predicated on a false premise. In citing them appellants assume that the Crabtree portion of the judgment is immune from attack under section 473 of the Code of Civil Procedure, or under any other provision of law, which assumption, as we have shown, is not the case.

Equally untenable is the contention of the appellants that the trustee, not being a party to said action, could not apply for relief under section 473 of the Code of Civil Procedure, and, therefore, was without any right to move the court to set aside the judgment and permit him to appear therein and contest the claims of the appellants."

Also in the case of

Hammond Lumber Co. vs. Gilkey, 120 Cal. App. 252.

See

Colliers 134 Ed. 420
In re Aronson, 27 ABR (NS) 274.

The right to intervene has been passed upon in the case of

Palmer vs. Bankers Trust Co. 12 Fed. (2d) 477;
U. S. vs. Chicago Terminal, 188 Fed 292;
Credits Commentation vs. United States, 177 U. S. 311, 20 S.CT. 636.
Plummer vs. Brown, 64 Cal. 429;
McKendricks vs. Western Zinc, 165 Cal 24.

Default Judgment is Invalid for Defective Service.

A default judgment is invalid unless process or summons was served upon the defendant as provided by law.

Smith vs. Jones, 171 Cal. 513;

Waller vs. Weston, 125 Cal. 201;
Rogers vs. Schneider, 205 Cal. 202.

This action was commenced in 1935 and the process served was an alias summons issued on April 21, 1937. This was before the adoption of the rules of Civil Procedure which became effective on September 20, 1938, and the Act of Congress adopting said Rules being the Act of Congress of June 19, 1934, CH 651:

Be It Enacted***That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States******Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant.

The Rules of the United States District Courts for the Southern District of California and the Conformity Act which was in effect Sec. 724 of 28 U.S.C.A. Judicial Code R. S. Sec. 914 at the time this action was commenced provided for the service upon the defendant personally and the said Rules of this Court still so provide. The rules adopted by the Supreme Court known as the Rules of Civil Procedure for the District Courts of the United States contain no provisions making the service of process by substitute service retroactive or affecting pending actions. We submit that the defendant is entitled to insist upon the service of a process being issued in 1937 being made in accordance with the law then in effect and the said process still outstanding cannot be affected by the adoption of the R.C.P. without violating the Congressional Act providing for said R. C. P.

Under the order of January 25, 1939, this Court designated E. M. Daniels to serve the summons in the place and stead of the United States Marshal. This order, not having been modified or changed, the United States Marshal had no authority to make, or attempt to make, the service of process. Since only one original summons was outstanding, the same should have been in the hands of E. M. Daniels and not in the hands of the *Marshall*. Both of said parties could not have served the same, and the Courts have gone so far as to set aside a default judgment where the wrong *Marshall* served the process. See

Doherty vs. Kalmbach, 87 Fed. (2nd) 539;
United States vs. Mitchell, 223 Fed. 805;
J. E. Petty vs. Dock Contractor Co., 283 Fed. 341;
St. Louis Southwestern Railway vs. Yates, 23 Fed. (2d) 283;

Rule 4-C is stated by the court in United States vs. Mitchell, supra:

"If the *marshall* is commanded by the writ to serve it, no other person may perform that duty****"

Higgins vs. Calff. Prune Growers, (CCA) 282 Fed. 550;
Cleaves vs. Funk, 76 Fed. (2nd) 828.

The Judgment Was Prematurely Entered in That the Complaint was Based Upon a Joint Liability on an Alleged Conspiracy and Judgment was Entered as Against One Defendant prior to Trial of the Issues With Respect to Other Defendants.

As stated above the co-defendants of Leonard J. Woodruff have answered but the action is still pending with respect to them, and plaintiff's complaint is based upon one claim although stated in three separate causes of action. No right existed prior to the adoption of the Rules of Civil Procedure for the entry of one judgment in an action at law and this action is governed by the law as it stood at the time of the filing of the action, but if the Court differ with us on this premise the rule has not been changed by the Rules of Civil Procedure since Rule 54, Subdivision "B" provides:

"When more than one claim for relief is presented in an action, the Court at any stage, upon a determination of the issues material to a particular claim******may enter a judgment disposing of such claim."

No provision is provided permitting a judgment on a joint obligation as to one defendant and therefore proceeding with the trial of the case as to the other defendants.

Hill vs. Lansing, 91 U. S. 160;
Moore's Federal Practice, Vol. 3, Sec. 3167;
Frow vs. De La Vega, 15 Wall. 552;
21 Law Edition, 60.

Schofield vs. Palmer, 134 Fed. 753, in which the rule is stated:

in which the rule is stated:

"The common law rule that prevails in this state as in a majority of the states is that in a joint action the judgment must be against all the defendants or against none of them. Formerly section 19 C 177 allowing judgment against less than all the joint contractors, does not apply where one of the defendants alone files a defense which is not personal, but goes to plaintiff's right of recovery against all defendants. It follows the notice of motion for judgment should be quashed as to both defendants."

The Complaint Does Not State a Cause of Action.

Moore's Federal Practice, Vol. 2, 2381, states a rule with respect to the rights of intervenor to question the complaint stating a cause of action. The rule is stated:

"Finally the intervenor may desire to question the merit of a claim or defense. Thus he may desire: (1) to question whether the allegations of the complaint are suffiicient: (2) to contest a claimant's right to a certain amount of damages: (3) press counter-claim.

There seems to be no doubt that an intervenor having an absolute right to intervene is able to raise any one of these questions." Clymore Prod. vs. Thompson, 11 Fed. Sup. 791: 63 Fed.

The rule is stated in

Marion County vs. Ridge, 13 Fed. (2d) 969, 971.

"There was yet another 'good cause' shown for vacating the judgment on the motion of the defendant viz: that the declaration did not state a cause of action.

"A default admits only what is well pleaded, and therefore, in order to sustain a judgment by default, plaintiff's declaration, complaint, petition or statement of claim, must allege with clearness and certainty sufficient facts to constitute a good cause of action. 34 C.J. 153; U. S. vs. Bell, 135 Fed. 336; 68 C.C.A. 144."

The rule is again stated:

"But a default along whether the action be in tort or contract, like a judgment or demurrer overruled, has no conclusive effect upon the final judgment to be rendered. It cures no defects in the declaration or complaint which a general demurrer would not have aided Love vs. Union etc. 242 U. S. 357, Cyc Fed Proc. 1519."

"The general rule respecting judgments that they should follow the pleadings, applies to default judgments. Glem vs. Mitchell, 282 Fed. 440."

Also "Cyc Fed Proc. 1521. The court will in a proper case grant leave to renew the motion to set aside a default."

See

Mobile Ship Bldg. vs. Fed Bridge Construction, 280 Fed. 292, cert. denied, 260 U. S. 726, 67 Led. 483.

The Complaint Does Not State a Cause of Action for Fraud.

The rule is stated in:

Consolidated Reservoir & Power Company vs. Searborough, et al. 216 Cal 698.

"The action sounds in fraud, and has for its purpose the recovery of certain damages and properties which it is averred the plaintiff has respectively suffered and lost by reason of an asserted fraudulent conspiracy between the defendants. The alleged fraudulent transactions of which complaint is made occurred in 1924. This action was commenced more than four years thereafter. In brief, the second amended complaint alleges that the plaintiff corporation was the owner of certain described real and personal properties of a designated value; that in the year 1924 this property was diverted from and *lot* to the plaintiff by reason of a fraudulent scheme and conspiracy between the defendants by means of which conspiracy the properties described were improperly employed to cover and satisfy the defalcations of one of the defendants in a matter in which the plaintiff corporation had no interest or connection: that

this result was accomplished by means of false and fraudulent representations being made to the board of directors of the plaintiff corporation by three of the defendants who were then members of said board; that it was falsely represented to such board that the property was being used to care for certain debts of the corporation; that in furtherance of such conspiracy and in order to conceal the fraudulent character of the transactions leading up to the dissipation of the plaintiff's properties, the defendants caused the minutes of the meetings of the board of directors, at which these transactions were consummated, to remain silent thereon: 'that the fraud hereinabove alleged was not discovered until on or about the first day of August, 1928, for the reason that the minutes of the said meetings of the said Board of Directors fail to disclose the transactions or the facts hereinabove alleged, and for the further reason that the defendant directors of said Robert P. Scarborough (who was not a member of the board) concealed the facts hereinabove related from the stockholders of the plaintiff corporation; that the facts hereinabove alleged were not known or discovered by the stockholders of the corporation or the present directors until an investigation of the affairs of the corporation was made by the present directors on or about August 1, 1928, which revealed the said facts'; and that as a result of such fraudulent conspiracy the plaintiff has suffered damage and loss of a character and to an extent specified in the prayer of the complaint.

To this complaint the defendants demurred both generally and specifically. Each demurrer, among other things, raises the bar of the statute of limitations. The trial court sustained the demurrers without leave to amend, whereupon plaintiff prosecuted this appeal."

(Citing cases and quoting from Wood vs. Carpenter U. S., then cites many cases including Galusha vs. Fraser, 178 Cal. 653, 657; 174 Pac. 314, 312.)

Again, quoting from the case of Consolidated, etc., vs. Scarborough, et al, 216 Cal. 703:

"The *cast* last above *coted* clearly and concisely states the law. It is there declared: 'Where the plaintiff sues for

relief on the ground of fraud and seeks exemption from the three years period of limitations for the reason that he did not discover the fraud until after it was perpetrated, he must not only show (1) that he did not discover the fraud until within the three years next before the action was begun and (2) that the fraud was committed under such circumstances that he would not be presumed to have had knowledge of it at the time, but (3) he must also set forth the times and circumstances under which the facts constituting the fraud came to his knowledge so that the court may determine from the allegations of the complaint whether the discovery was within that period.

"Tested by the rules set down in the cited cases, we are of the view that the complaint in the case at bar is deficient and that the trial court therefore properly sustained the demurrers thereto. It may be conceded that the present complaint satisfies the first two requirements above enumerated in that it alleges that the fraud was discovered within three years of the commencement of suit and that it was committed under such circumstances as to preclude any presumption of knowledge on plaintiff's part at the time of its commission. But, as already indicated, the cases recognize and declare the existence of a third essential to a valid and proper pleading in a case of this character, viz., an allegation as to the circumstances surrounding the discovery of the fraud complained of. Such an allegation is necessary in order that the trial court might readily determine whether or not the facts and circumstances leading to the discovery of the fraud existed for more than three years prior to the commencement of suit.

See

Wood *vs.* Carpenter, 101 U.S. 135, 140, 25 Law Ed. 807

where the rule is stated:

"In this class of cases the plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentations were discovered,

and what the discovery is, so that the court may clearly see whether, by ordinary diligence the discovery might not have been made—A general allegation of ignorance at one time and of knowledge at another is of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner****** A party seeking to avoid the bar of the statute on account of fraud must aver and show that he used due diligence to detect it, and if he had the means of discovery in his power, he will be held to have known it*****. There must be reasonable diligence; and the means of knowledge are the same thing in effect as knowledge itself. The circumstances of the discovery must be fully stated and proved, and the delay which has occurred must be shown to be consistent with the requisite diligence."

A very similar case arises in the case of

Blumen vs. Clayburgh, 51 Pac. (2d) 10 Cal. App. 2d 63,

where the Court stated the rule:

"There is one debatable question involved in the appeal not stated by either party but nevertheless determinative and that is whether the complaint sufficiently pleads the times and circumstances under which the facts constituting the fraud were brought to plaintiff' knowledge so that the court could determine whether the complaint was filed within the period covered by the statute of limitations.

The complaint alleges that plaintiff incurred an obligation with certain defendants engaged as stockbrokers in the city and county of San Francisco through the purchase of stocks on margin, and to secure his indebtedness deposited with the brokers certain securities; that when the indebtedness amounted to about $3,500 the brokers sold the securities for approximately $5,800, satisfied the indebtedness and paid the balance over to the defendant Fidelity and Deposit Company; that this sale was consummated on March 25, 1926, at a time when the plaintiff was a fugitive from justice, having been indicted by the San Francisco grand jury for grand theft on February 18, 1926; that on May 1, 1926;

plaintiff was located in London, England, arrested, and returned to San Francisco to stand trial under this indictment; that the plaintiff arrived in San Francisco on August 11, 1926, and remained in the county jail of that county from said date until April 29, 1927, when he was removed to the state penitentiary at San Quentin pursuant to sentence following a conviction on March 12, 1927, on that indictment; that he remained in the state penitentiary from April 29, 1927, until June 19, 1933, at which time he was released on parole. The complaint in this action was filed March 22, 1934. The foregoing facts and no more are relied on to support the bald allegation that the alleged fraud was 'not known or discovered by the said plaintiff until the Month of May, 1927.' At this point it should be noted that plaintiff was delivered to the state penitentiary on April 29th and that the alleged discovery in 'the month of May' might have occurred two days after his delivery; hence his discovery during the first days of his incarceration was a most fortuitous circumstance for him because, his action accruing at that date, he could claim a suspension of the statute of limitations during the full six years of his incarceration under the provisions of section 352 of the Code of Civil Procedure.

With these facts before us it is necessary for us to determine not whether the complaint states a cause of action in fraud but whether it sufficiently pleads 'the times and the circumstances under which the facts constituting the fraud were brought to his knowledge, so that the court may determine whether the discovery of these facts was within the time alleged; . . . ' (Lady Washington C. Co. vs. Wood 113 Cal 482, 487, (45 Pac. 809, 810).). To amplify we might assume that the complaint states a good cause of action, but this is not enough; the duty rests first upon the trial court to determine whether the alleged discovery was within the time alleged, and the determination of the trial court on that question is controlling upon us unless the facts alleged are such as will show a manifest abuse of discretion.

In a case closely allied the Supreme Court in Consolidated R. & P. Co. vs. Scarborough, 216 Cal. 698, 703 (16 Pac. (2d) 268), emphasized the necessity of pleading the facts and

circumstances surrounding the discovery of the fraud complained of in order that the trial court might readily determine whether or not the facts and circumstances leading to the discovery of the fraud existed for more than three years prior to the commencement of suit.' Numerous cases are there cited in support of the rule and the Supreme Court further emphasized, on the authority of Wood vs. Carpenter, 101 U. S. 135, 140 (25 L. Ed. 807), and the California cases theretofore cited, that the means of knowledge are the equivalent of knowledge. Quoting from Bancroft vs. Woodward, 183 Cal. 99, 108 (190 Pac. 445), 'where a party has knowledge of facts of a character which would reasonably put him upon inquiry, and such inquiry, if pursued, would have led to discovery of the fraud or other ground for rescission, he will be charged with having discovered the fraud or other ground as of the time he should have discovered it, that is, as of the time when he would have discovered it if he had with reasonable diligence pursued the inquiry when he should have done so.'

In the instant case the allegations to the effect that plaintiff did not discover the alleged fraud until immediately after he had been confined in the state penitentiary is insufficient under the rule of the authorities cited. No facts nor circumstances leading to the alleged discovery at that time are pleaded."

The Complaint Does Not State a Cause of Action for Conversion.

Plaintiff relies upon a conversion by judicial sale. The statute of limitations is three years from the date of the sale and discovery has nothing to do with the extension of the statute.

Plaintiff's complaint shows in subdivision (f) of paragraph X that plaintiff transferred the property to the Golden State Gem Company of Nevada, but in subdivision (d) of said paragraph X that the defendant Smith was given access and the right to withdraw said merchandise together with the right to sell the same.

"Where the right or authority is given to sell personal

property for another, a conversion of the property does not result from the failure to pay over the proceeds for an action in conversion is not the proper remedy."

Thompson vs. Culver City Motors, 4 C. A. (2d) 639.

Also

An action for a conversion will not lie unless the ownership of the property and the right of possession of the goods are in the plaintiff. See

Hilmer vs. Hill, 138 Cal. 134;
National Lumber vs. Tejunga Val. Rk. Co. 22 C. A. 726;
National Finance vs. Lynch, 94 C. A. 557.
D'Alessandro vs. Pickford, 22 Cal. App. 2nd 242.

Inclusion of Interest in the Judgment is Erroneous.

Section 580 of the Code of Civil Procedure, Equity Rule 55, the cases are to the effect that a default judgment cannot exceed the amount demanded in the complaint, and since no conversion could occur for the merchandise sold by Smith, which he had the right to sell pursuant to plaintiff's agreement as alleged in paragraph X, nor can interest be allowed until a demand was made for the return of the merchandise, and the complaint not showing when the demand was made, the allowance of interest on the alleged claim of conversion must fall. If the plaintiff relies upon the execution of sale sold on said execution or only a portion thereof, to-wit: the industrial sapphires. The judgment allowing interest on the amount sued for by plaintiff, not from the date of demand, but from the date of the execution sale, is contrary to the law.

The Judgment Does Not Conform to the Complaint.

The complaint is based upon three separate counts. The judgment does not show on which count the same was entered, nor does the same conform to any particular count, or whether the same is based upon fraud, or upon conversion, or upon breach of contract and the same is erroneous in that respect.

14 Cal. Juris. 901;
Howe vs. Key System Transit Co., 198 Cal. 525, 529.

The Complaint is Barred by Laches and the Statute of Limitations.

"It is the policy of the law to prevent the making of a claim for fraud after the lapse of many years." Nighbert v. First National Bank of Bakersfield, 93 C. A. D. 654; 79 Pac. (2d) 1105.

Haley v. Santa Fe Land Inmprovement Company, 5 C. A. (2d) 415:

"In cases where relief for fraud is sought, by action commenced more than three years after the perpetration of the fraud, plaintiff is held to stringent rules of pleading and evidence, and especially must there be distinct averments as to the time when the fraud was discovered and what the discovery is, so that the court may clearly see whether by ordinary diligence the discovery might not have been sooner made, and a general allegation of ignorance at one time and of knowledge at another is of no effect, but if plaintiff made any particular discovery it should be stated when it was made, how it was made and why it was not made sooner.

In such an action, a party seeking to avoid the bar of the statute must aver and show he used due diligence to detect the fraud, by setting forth the times and circumstances under which the facts constituting the fraud came to his knowledge, so that the court may determine from the allegations of the complaint whether the discovery was made within the period, and if he had the means of discovery in his power he will be held to have known it.

"Discovery" and "knowledge" are not *convertible* terms, and whether there has been a proper allegation as to a "discovery" of the facts constituting the fraud within the meaning of the statute of limitations is a question of law to be determined by the court from the facts pleaded".

Defendant's Right to Have Judgment Entered Under Section 60B.

Section 60B of the new Rules of Federal Procedure really places upon the statute what previously was a rule in California since Rule 60B was based upon the California Code of Civil Procedure, Section 473. Moore on Federal Procedure, Section 3279, in discussing Rule 60B states:

"As to what types of situation will justify relief under Rule 60B, there is little federal precedent since the subdivision is taken from California practice. Rule changed so as to more nearly conform to the wording of the analogous provision of the California Code of Civil Procedure which has worked very well in California practice. The California Statute has been construed to cover relief from judgments taken against party through accident, and fraud. This construction is in keeping with California Decision holding that their code provision is remedial and should, therefore, be liberally construed."

All of the California cases as pointed out above provide for a liberal construction of this section with the object in mind of giving a defendant who appears to have a meritorious defense a chance to have the case tried upon its merits. See

Simkins Federal Practice 3rd Ed. Sec. 1134 Page 820 to 827.
Ohlinger Fed. Practice Vol. 3 P. 810.
Daniels v. Calkins 201 Cal. 10.
Waite v. So. Pacific Co. 192 Cal. 467.
Nuckolls v. Bank of Calif. 10 Cal. (2) 266.

The defense of the statute of limitations in addition to the defenses hereinabove set forth are meritorious defenses. See

Lilly-Brackett Co. v. Sonnemann, 157 Cal. 192,

quoting from p. 196 where the rule is stated:

"The sole question, then, is whether a plea of the statute of limitations is an answer to the merits. The point is one that has come before the courts of various states, and while the earlier cases showed a tendency to hold that such a plea is merely technical, and should not be permitted to a

defendant who has been in default (citing cases) the decided weight of authority, and particularly of modern authority, supports the view that the statute of limitations is to be viewed as a statute of repose, and, as such, is a meritorious defense which may with propriety be set up after a default has been vacated."

Also in the case of

Wood vs. Carpenter, 101 U. S. 135,

the Supreme Court of the United States states the rule:

"*Statute* of limitations are vital to the welfare of society, and are favored in the law. They are found and approved in all systems of jurisprudence. They promote repose by giving security and stability to human affairs; important public policy lies at their foundation; they stimulate to activity and punish negligence. While time is constantly destroying the evidence of rights, they supply its place by a presumption which renders proof unnecessary."

Shain vs. Sresovich, 104 Cal. 406;
Nichols vs. Randall, 136 Cal. 432;
Guaranty vs. U. S., 304 I. S, 126;
Flack vs. Boland, 11 Cal. (2d) 106.

Judgment is Void Under Section 67d of the Bankruptcy Act as Amended.

The affidavit of P. M. Jackson shows that Leonard Woodruff was adjudicated a bankrupt on July 5, 1939. Section (2) of subdivision d provides:

"Every transfer made and every obligation incurred by a debtor within one year prior to the filing of a petition in bankruptcy . . . . or against him is fraudulent (a) as to creditors existing at the time of such transfer or obligation if made or incurred without fair consideration by a debtor who is or will be thereby rendered insolvent without regard to his actual intent; or (b) as to then existing creditors and as to other persons who become creditors during the continuance of a business or transaction, if made or incurred without fair consideration by a debtor who is engaged or is about to engage in such business or transaction".

Subdivision (6):

"A transfer made or an obligation incurred by a debtor adjudged a bankrupt under this Act, which is fraudulent under this subdivision d against creditors of such debtor having claims provable under this Act, shall be null and void against the trustee . . . . ."

In 4 Fed. (2d) 269 the rule is stated:

"A transfer is defined to be not only the sale of property, but every other and different mode of disposing of or parting with property. All technicality and narrowness of meaning is precluded, ... and is intended to include every means and manner by which property can pass and by which results forbidden by statute may be accomplished."

In Re Salmon, 38 Am. B. R., 692, 694, the rule is stated:

"That the payment results in diminishing the fund available to other creditors is obvious, since by hypothesis the debtor who is insolvent, receives no new consideration. If in addition he knows of his inevitable insolvency, he knows that this result must follow, and he intends it, though it may not be his actuating motive. But it is argued that though the payment defeats pro tanto his other creditors, it is only for the benefit of another creditor, who should be still recognized as such in spite of his debt's being subject to a complete defense.

Yet, even if one preserves the most orthodox theory and regards the debt as still existing, subject to its defense, a theory full of vicious casuistry, the defense to the debt still remains a valuable right, which will pass to the bankrupt's creditors. The whole presupposition of the rules against fraudulent conveyances is that from the time a debtor knows that he is insolvent he holds all his property subject to the interests of his creditors. While he may continue its management in the genuine interest of both them and himself, he loses all right to diminish its value to them. Certainly there is no reason why his disability should not extend to the destruction of any defense he may have to an otherwise valid claim. It is true that the defense of the Statute of Limitations has at all times been called unconscionable, but that view does not now prevail, nor is there the least reason

in policy why it should. The case at bar is a good instance of the injustice of treating the defense of the statute as different from any other defense, since a debt like this, outlawed by more than three times the statutory period, cannot in the nature of things have been expected by the parties to continue as an obligation with the usual coercive sanctions. By the time of the bankruptcy it was certainly meant only as a moral obligation, and it would be highly unjust now to allow it by a mere device to reassume its place among other debts which were supposed to have all the sanctions of law.

In this aspect it is unnecessary to consider whether or not the creditor, Hamilton H. Salmon, was put on inquiry as to the bankrupt's insolvency, the distinction taken in Re Bank, supra, because the question is only whether the bankrupt may *gratuitiously* destroy a part of his estate, i. e., a valid defense, in the interest of a third person, and to the prejudice of his creditors. The case is analogous to a voluntary transfer in fraud of creditors, where it is never necessary to show that the transferee had notice. Young v. Herrmans, 66 N. Y., 374; Beecher v. Clark, 12 Blatch. 256."

Defendant respectfully submits that a gross injustice will be done to the other creditors if the judgment in the above entitled matter is permitted to stand, where the trustee and creditors are unable to defend the matter on the merits, and where their answer and the affidavits show that they have a good and sufficient defense.

Respectfully submitted.

COBB, CAMPBELL & KELLEY
By FRANCIS B. COBB,
Attorneys for defendant M. P. Jackson, Trustee in Bankruptcy for Leonard Woodruff, and for Leonard Woodruff.

[Exhibit C to the affidavit of Francis B. Cobb in support of motion to set aside judgment, reporter's transcript of argument on motion to vacate judgment and set aside default, is identical with objectors' exhibit CC, which appears at page 987.]

[Objectors' exhibit 5, certified copy of appellants' opening brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit EE. The designated portions of objectors' exhibit EE appear at page 1014.]

[Objectors' exhibit 6, certified copy of appellee's brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit FF. The designated portions of objectors' exhibit FF appear at page 1015.]

[Objectors' exhibit 7, certified copy of appellants' closing brief, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit GG. The designated portions of objectors' exhibit GG appear at page 1015.]

[Objectors' exhibit 8, certified copy of transcript of record, case No. 9356, United States Circuit Court of Appeals, Ninth Circuit, Jackson, Trustee, et al. v. Heiser, is identical with objectors' exhibit DD. The designated portions of objectors' exhibit DD appear at page 1013.]

[Transcript of Proceedings.]

Willie Mae Woodruff Claim.

Hon. Geo. F. Clark, Referee in Bankruptcy.

Ardmore, Oklahoma, Nov. 18, 1940; Nov. 19, 1940; Nov. 20, 1940; Nov. 22, 1940.

258 Appearances: W. W. Potter, Ardmore, Oklahoma, Attorney for Willie Mae Woodruff; Rupert Beach Turnbull, Los Angeles, Calif., Attorney for M. E. Heiser.

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259 (This transcript concerns the claim of Willie Mae Woodruff in this estate only and some exhibits were introduced, being 1 to 80. The claim of Mrs. Willie Mae Woodruff being Exhibit No. 6; same being with the original files in this case, the other exhibits, 1 to 80 (except No. 6) being transmitted herewith to Judge Geo. F. Clark, Referee in Bankruptcy) (O. E. English, Reporter.)

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260 Now on this the 18th day of November, 1940, came on to be heard in the above styled and numbered cause the matter for the approval or the rejection of claims filed in the above entitled estate, after which the following proceedings were had herein:

By Mr. Potter: If the Court please, regarding the Willie Mae Woodruff claim would it be possible to get the original exhibits?

By the Court: Yes, I will go and get them now.

(Whereupon the original claim herein was procured.)

By Mr. Potter: If the Court please at this time we would like to offer some proof regarding the claim of Willie Mae Woodruff.

By the Court: All right, proceed.

261 WILLIE MAE WOODRUFF, being duly sworn to tell the truth, the whole truth and nothing but the truth testified as follows:

Direct Examination.

By Mr. Potter:

Q. Will you state your name?.

A. Willie Mae Woodruff.

Q. Are you the wife of Leonard J. Woodruff, the Bankrupt?

A. Yes sir.

Q. When were you married?

A. The 2nd day of May, 1914.

Q. Subsequent to that time did Mr. Woodruff give you any property located in Carter County, Oklahoma?

A. Yes sir.
Q. When did he do that, Mrs. Woodruff?
A. It was in 1919.
Q. Did he give you a Warranty Deed to this property?
A. Yes, sir, he did.

By Mr. Turnbull: If the Court please, we object to that as not the best evidence and calls for a conclusion of the witness and we ask that the answer be stricken subject to the ruling on the objection.

By the Court: Sustain the objection.

By Mr. Potter:

Q. Did he deliver to you an instrument evidencing the transfer of this property?
A. Yes, sir.
Q. Do you have the instrument with you?
A. Yes, sir, I do.

Q. The instrument which I have had marked as
262 the Willie Mae Woodruff Exhibit "1" and now Mrs. Woodruff, I hand you an instrument which has been marked for identification as Willie Mae Woodruff's Exhibit "1" and I will ask you what that instrument is.

By Mr. Turnbull: We object to that as a conclusion of the witness. I make no objection to the instrument but I object to the witness telling what the instrument is.

By Mr. Potter: If the Court please, I believe the witness has a right to state what the instrument purports to be.

By Mr. Turnbull: It is acknowledged and recorded and I stipulate that that is Mr. Woodruff's signature on it but I object to this witness giving her opinion as to what the instrument is or what it purports to be.

By Mr. Potter:

Q. Do you know what this instrument is?

By the Court: Go ahead, overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Potter: What is it?

A. It is a deed to certain property.

Q. Was there an oil and gas lease on that property when it was deeded to you in 1919?

By Mr. Turnbull: We object to that as calling for an opinion and a legal conclusion of the witness as to real estate and if there is such an instrument I will be glad to stipulate with counsel as to the instrument.

263 By Mr. Potter: If she knows whether or not there was an oil and gas lease on the property she should be allowed to answer.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Potter:

Q. Was there?

A. No, sir.

Q. Was there subsequently placed on the property an oil and gas lease?

By Mr. Turnbull: We object to that as calling for a conclusion of the witness and it must be in writing and I have had no opportunity to examine the instrument and it is invading the province of the Court as to whether an oil and gas lease was given on the property.

By Mr. Potter: If the Court please, I do not think that would be hearsay evidence or a conclusion, I can bring the records up here of course, but I merely asked if there was an oil and gas lease on it and when the witness answered there was not then I asked was there one subsequently placed on the property after she acquired it.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

264 By Mr. Potter:

Q. Was there such an instrument placed on the property?

A. Yes, sir.

Q. Did you sell that lease yourself?

A. Yes, sir.

Q. Did you receive the runs for the payment of the oil and gas produced from this property?

A. Yes.

Q. Was the property developed for oil and gas under the lease which you sold?

A. Yes, sir.

Q. And to whom did you sell the lease?

A. To the Carter Oil Company.

Q. And the property was developed under that lease?

A. Yes, sir.

Q. Pursuant to that development did you receive any money for the production of oil and gas on the property?

A. Yes, sir.

Q. How did you receive that money?

A. In the way of checks from the Carter Oil Company made to me.

Q. What did you do with those checks?

A. They were deposited in the bank.

Q. To whose credit?

A. Willie Mae Woodruff's credit.

Q. Have you had occasion to ascertain how much money the Carter Oil Company paid you over a period of weeks or years?

A. Yes, sir.

Q. Did you obtain a statement from the Carter Oil
265 Company showing the amount of runs from this property?

A. Yes, sir.

Q. What did that statement show that you had been paid?

By Mr. Turnbull: We object to that, that is hearsay pure and simple.

By the Court: Sustain the objection.

By Mr. Turnbull: I don't want to be technical but I want to know as to that.

By Mr. Potter:

Q. You did have occasion to request the Carter Oil Company for a statement as to the money paid to you under this lease?

A. Yes, sir.

Q. Did you receive such a statement from the Carter Oil Company?

A. Yes, sir. I did.

Q. I have had that statement marked as Willie Mae Woodruff's Exhibit "2" and I hand you that instrument and I will ask you to state what that is.

A. It is the oil runs from my oil lease for 1920 to 1930.

Q. Is that the statement furnished to you by the Carter Oil Company upon your request?

A. It is.

Q. And is this the same property covered by the deed?

A. Yes, sir.

By Mr. Potter: If the Court please, we offer Exhibits "1" and "2" in evidence.

By the Court: Very well, let them be introduced.

By Mr. Potter:

Q. When that money began to come in to you what
266 disposition did you make of it if any?

A. I asked Mr. Woodruff to invest it for me and I did not know anything about business and he said he would.

Q. Pursuant to that agreement did you continue to deliver him money for the purpose of investing it for you?

A. Yes, sir.

Q. Just what was the agreement?

A. That he was to take this money that was received from my property and invest it in some good bond or bonds and he was not to speculate on it in the least.

Q. Did you specifically advise him as to what it should be invested in?

A. Yes, sir, put it in good bonds and not speculate in it.

Q. Did you continue to deliver him money over a period of years to invest for you?

A. Yes, sir.

Q. You did continue to deliver money to him for that purpose?

A. I did.

Q. How much money did you receive from this property from 1920 to 1930 inclusive?

A. $760,750.68.

Q. Mrs. Woodruff, I hand you Claimant's Exhibit "3", an instrument which has been marked for identification and I will ask you to state what that is.

By Mr. Turnbull: If the Court please, I will stipulate as to what it is, as to the check, the next instrument, I stipulate the signature of the witness is signed to the check and the check was cashed for its full amount as shown on the face of the check.

267 By Mr. Potter:

Q. I hand you Exhibit "3" and I will ask you to state what that purports to be.

By Mr. Turnbull: I object to what it purports to be.

By Mr. Potter:

Q. What is it?

By Mr. Turnbull: That is invading the province of the Court to determine what it is.

By Mr. Potter: It is a bill for 5,000 U. S. Government Third Liberty Loan four and a halves price eighty-eight and three-quarters amounting to $4484.25.

By Mr. Turnbull: I stipulate that the instrument is genuine and it shows for itself what it is.

By Mr. Potter: And on the bottom of this instrument, if the Court please, it says, "Bought for Willie Mae Woodruff, paid for out of her personal account," and it is signed "Leonard Woodruff", and it also says "Sold at 86.48".

Q. Will you tell the Court whether or not you know whose handwriting appears to be on the bottom of that bill or statement?

A. Leonard Woodruff's.

Q. You know Mr. Woodruff's handwriting?

A. I do.

Q. And it shows that was bought with your money and out of your personal funds?

A. Yes, sir.

268 By Mr. Turnbull: We object to that, that is invading the province of the Court and substituting the word of the witness for the bill.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibit "4", being a check dated May 13th, 1920, on the First National Bank of Los Angeles, pay to the order of Drake, Riley & Thomas $4484.25, and signed by Willie Mae Woodruff and endorsed on the back by Drake, Riley & Thomas and the check has been stenciled paid. I now ask that the instrument which I hand the Reporter be marked as Willie Mae Woodruff's Exhibit "5".

By Mr. Turnbull: This instrument which counsel has marked for identification as Exhibit "5", is a check of Willie Mae Woodruff duly drawn on the First National Bank of Los Angeles, California, in the sum of $25,000.00 and endorsed on the back by Leonard Woodruff, and we will say that that is his genuine signature.

By Mr. Potter:

Q. I hand you Exhibit "5" and I will ask you if the $25,000.00 evidenced by that draft or check was delivered to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose Mrs. Woodruff?

A. For the purpose of buying bonds.

269 Q. Do you know whether or not he bought stock or bonds with that money?

A. Yes, sir.

Q. Those stocks or bonds ever delivered to you?

A. No, sir.

Q. Were they ever sold and were you ever paid any part of the money?

A. No, sir.

By Mr. Turnbull: The instrument dated July 2nd, 1920, which is a check from Willie Mae Woodruff to Leonard Woodruff for $350.00 bears the signature of the maker and the endorser's signature. Leonard Woodruff is on the back, and it was paid as indicated thereon. I have examined a

great many checks, if the Court please, and I offer to enter into this stipulation as he produces the checks in each case when the signature is Willie Mae Woodruff, when she is the maker of the check and Leonard Woodruff has endorsed the check, in all such cases, and if I do not make an additional objection they may be introduced without further objection. This is in each instance whether it is by rubber stamp or original endorsement and where the check is made to Drake, Riley & Thomas the same stipulation applies, whether the endorsement is by rubber stamp or otherwise, and if I do not raise any other objection they may be introduced
270 in evidence without further objection.

By Mr. Potter: If the Court please, I would like to offer the original claim in evidence by reference as our Exhibit "6".

By the Court: Very well.

Q. Mrs. Woodruff, I have six checks attached together and marked for the purpose of identification as Willie Mae Woodruff's Exhibit "7", counsel has agreed that the signature on those checks are yours and the endorsement thereon is the signature of Leonard Woodruff, I would like to ask you whose handwriting filled the checks out.

A. Leonard Woodruff.

Q. Those checks were delivered by you to Mr. Leonard Woodruff?

A. Yes, sir, they were.

Q. For what purpose?

By Mr. Turnbull: They are all in 1920 are they counsel?

By Mr. Potter: Yes, sir, they are.

A. The check of October 25th, 1920, for $2376.00 was filled out in its entirety by me I believe and delivered to Mr. Woodruff, yes, that is right.

By Mr. Potter:

Q. And the other checks were filled out by Mr. Woodruff?

A. Yes, sir.

Q. And delivered to Mr. Woodruff?

A. Yes, sir.

Q. For what purpose Mrs. Woodruff?
A. To buy bonds.
Q. To buy bonds for you?
271 A. Yes, sir.

By Mr. Turnbull: Counsel shows me a check dated July 12th, 1920, for $8657.47. I will stipulate that is the signature of Willie Mae Woodruff signed to the check, the check is made payable to Drake, Riley & Thomas and counsel stipulates that Drake, Riley & Thomas were stock brokers in Los Angeles, California, at that time:

By Mr. Potter:

Q. I hand you a check that has been marked as Willie Mae Woodruff's Exhibit "8" and a bill from Drake, Riley & Thomas which has been marked as Willie Mae Woodruff's Exhibit "8-A", I will ask you if there is any writing on the bottom of that bill from Drake, Riley & Thomas.
A. Yes, sir.
Q. Do you know whose handwriting that is?
A. Yes, sir, it is Leonard Woodruff's handwriting.
Q. The exhibit bears at the bottom in the handwriting of Leonard Woodruff these words, "Bought for Willie Mae Woodruff, paid for out of her personal acct. Leonard Woodruff."

By Mr. Turnbull: To which I object, if he is offering it all right but if he is reading it before it is offered I object.

By Mr. Potter: If the Court please, I offer Willie Mae Woodruff's Exhibit "8" and "8-A" in evidence.

By Mr. Turnbull: There is no objection to Exhibit "8", but as to "8-A", I object to it for the reason there is
272 handwriting on it that is a statement of fact, purports to be a statement within itself, if Mr. Woodruff is here and will testify to it as to being his handwriting, that is one thing, but this witness cannot testify to it. It is not any evidence as against creditors and there is no testimony here as to when it was put on there.

By the Court: I will sustain the objection.

By Mr. Potter: That was offered together with Exhibit "8", if the Court please.

Q. Mrs. Woodruff, I again show you the instrument which has been marked as Willie Mae Woodruff's Exhibit "8-A" and I will ask you if that instrument was ever delivered to you by Mr. Woodruff?

A. No, it was not.

By the Court: I sustain the objection to Exhibit "8-A".

By Mr. Potter: Your Honor rules that this bill is not admissible at this time?

By the Court: Yes, I do.

By Mr. Potter: We would like to offer proof on it later.

By Mr. Turnbull: Do you expect to have Mr. Woodruff available?

By Mr. Potter: Yes, sir, we do.

By Mr. Turnbull: Very well.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument which has been marked as Willie Mae Woodruff's Exhibit "9", I will ask you to state what it is.

273 By Mr. Turnbull: If the Court please, I will stipulate as to all signatures thereon, the signature of the maker and the endorser.

By Mr. Potter:

Q. Was that check filled out by you?
A. No, it was not.
Q. Who did fill it out?
A. Leonard Woodruff.
Q. Was it delivered to Leonard Woodruff by you?
A. Yes, sir.
Q. Signed by you?
A. Yes, sir.
Q. For what purpose?
A. To buy bonds for me.
Q. Did you ever receive the bonds?
A. No, sir.
Q. Or any of the proceeds from the sale of the bonds?
A. No, sir.

Q. Claimant's Exhibit "10", and it has been stipulated that the signature is genuine and the endorsements are regular and attached to it is a bill marked Claimant's Exhibit "10-A" from Drake, Riley & Thomas showing the bonds issued to Leonard Woodruff in the sum of $3,000.00, and the check of Mrs. Woodruff in the sum of $2,452.92 in payment therefor, that is your signature?

A. Yes, sir.

By Mr. Potter: We offer in evidence Mrs. Woodruff's Exhibit "10" and "10-A", if the Court please.

By the Court: All right.

274 Q. Mrs. Woodruff, I show you what is marked for identification as Exhibit "11", and I will ask you if you know whose signature, whose handwriting filled out that check.

A. Leonard Woodruff's.

Q. That check is filled out, was filled out at the time you signed it?

A. I often signed a blank check and he would fill them out, I would not say.

Q. Look at Exhibit "11-A", that is thereto attached, and the writing on the bottom of that exhibit, you know whose handwriting that is?

A. Leonard Woodruff's.

Q. You know when that was put on there?

A. No, I don't know.

Q. Were those bonds, they appear to have been issued in Leonard Woodruff's name and paid for by you, were those bonds ever delivered to you?

A. No, sir.

Q. Or the proceeds therefrom?

A. No, sir.

By Mr. Potter: We offer the exhibit in evidence, if the Court please.

By the Court: Very well.

By Mr. Potter:

Q. I hand you Claimant's Exhibit "12", you know who filled out that check?

A. Leonard Woodruff.
Q. That is your signature on the bottom?
A. Yes, sir.
Q. That was charged to your account?
A. Yes, sir.
275 Q. And paid for bonds evidenced thereby on Exhibit "12-A", sold to Leonard Woodruff?
A. Yes, sir.
Q. Were those bonds ever delivered to you?
A. No, sir.
Q. Or the proceeds of the sale of the bonds or the bonds, were they ever delivered to you?
A. No, sir.
Q. The notation on the bottom of the receipt, in whose handwriting is that notation?
A. Leonard Woodruff.
Q. Do you know when that was placed there?
A. No, I do not.

By Mr. Potter: We offer Exhibit "12" in evidence, if the Court please.

By the Court: Very well.

By Mr. Potter:

Q. I hand you Exhibit No. "13" and I will ask you who filled out that check.
A. Leonard Woodruff.
Q. Is that your signature on the bottom?
A. Yes, sir.
Q. Was that check charged to your account?
A. Yes, sir.
Q. And it was issued for the purpose of buying bonds evidenced by the receipt marked Exhibit "13-A"?
A. Yes, sir.
Q. Were those bonds issued to Leonard Woodruff?
A. Yes, sir.
Q. Were they ever delivered to you?
276 A. No, sir.
Q. Ever transferred to you?
A. No, sir.

Q. I notice on the bottom of the receipt some handwriting, who wrote that?

A. Leonard Woodruff.

Q. You notice on the receipt where it says sold, were the proceeds of the bonds ever delivered to you?

A. No, sir.

Q. Did you sell the bonds?

A. No, sir, I did not.

By Mr. Potter: We offer Exhibit "13" in evidence.

By the Court: All right.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Claimant's Exhibit No. "14", who filled out that check, if you know?

A. Leonard Woodruff.

Q. That check is drawn against your account, is it?

A. Yes, sir.

Q. And paid by you?

A. Yes, sir.

Q. In payment of bonds as evidenced by Exhibit "14-A"?

A. Yes, sir.

Q. Issued in Leonard Woodruff's name?

A. Yes, sir.

Q. You notice that pencil notation on the bottom of the statement, in whose handwriting is that?

A. Leonard Woodruff.

Q. Did you ever receive the bonds?

277 A. No, sir.

Q. Or the proceeds from the sale of the bonds?

A. No, sir.

By Mr. Potter: We offer in evidence Claimant's Exhibit "14" if the Court please.

By the Court: All right, let them go in, let all the exhibits go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit "15"—

By Mr. Turnbull: If the Court please, counsel stipulates that the check for $15,980.63 in favor of Drake, Riley

& Thomas, I will stipulate there is such a check and that it was endorsed by Drake, Riley & Thomas, dated September 13th, 1920, and stipulated the money was paid to Drake, Riley & Thomas as indicated by the check.

By Mr. Potter: And charged to the account of Mrs. Woodruff.

By Mr. Turnbull: Yes, sir, I stipulate as to that. As to Exhibit No. "16" which is a statement dated February 4, 1921, two months later, is a statement issued by Drake, Riley & Thomas under date of February 4, 1921, and it shows a list of stocks and bonds sold to Leonard Woodruff.

By Mr. Potter: And that the bonds that were sold were credited to the account of Leonard Woodruff.

By Mr. Turnbull: I stipulate as to the list of stocks and bonds bought for the account of Leonard Wood-
278 ruff, yes, sir, and under the item of credit there appears an item of $15,980.63 under the date of December 13th, by cash, and I will stipulate that the check marked Exhibit "15" is the credit as shown on this list.

By Mr. Potter: I desire that the exhibits go in evidence otherwise the stipulation is not understandable and I offer in evidence Exhibits "15" and "16".

By the Court: All right.

By Mr. Turnbull: Counsel hands me a draft signed by Willie Mae Woodruff in favor of Drake, Riley & Thomas, endorsed by Drake Riley & Thomas and it says to First National Bank, Los Angeles, and is in the sum of $9,149.46. I will stipulate the signature is that of Willie Mae Woodruff and that it was signed on the date it bears, which was April 12th, 1920, and that amount of money; $9,149.46 is the same money shown on the bill of April 10th, 1920, marked paid 4-12-1920, Drake, Riley & Thomas; the draft to be marked Willie Mae Woodruff's Exhibit "17" and the bill and receipt as Exhibit "17-A". As to two other drafts I will stipulate that the check dated April 16th, 1920, for $8,691.68 is a check made by Willie Mae Woodruff and that this is her

signature thereon, that the check is made to Drake,
279 Riley & Thomas and is endorsed by them, and that they received the money as evidenced by said check and the instrument attached thereto dated April 15th, 1920 is a receipt issued to Leonard Woodruff marked paid April 16th, 1920, for the same amount of money, $8,691.68, in other words it is the receipt for that money as shown by the receipt.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check that has been marked as Claimant's Exhibit "17" and attached thereto is a bill marked "17-A" with handwriting across it, in whose handwriting is that?

A. Leonard Woodruff.

Q. The word "Sold" there written in Leonard Woodruff's handwriting?

A. Yes, sir.

Q. The bonds were issued to Leonard Woodruff?

A. They were.

Q. And paid for with your money?

A. Yes, sir.

Q. You know if you ever received the proceeds from the sale of the bonds?

A. No, sir, I never did.

By Mr. Potter: We would like if counsel would stipulate at this time as to the writing on the bottom of these
280 statements, as to whether or not it is in the handwriting of Leonard Woodruff.

By Mr. Turnbull: I cannot do that at this time. I have stipulated that these checks were signed by Willie Mae Woodruff and charged to her account.

By Mr. Potter:

Q. And these bonds sold for $84.36?

A. Yes, sir.

By Mr. Turnbull: Does counsel contend that these notations were made on these receipts at about the time the receipts were made?

By Mr. Potter: Yes, sir, they were.

By Mr. Turnbull: In each instance where we have a receipt from Drake, Riley & Thomas and their stamp on it paid on this bill, we do stipulate that the notation and handwriting over the signature of Leonard Woodruff was placed there at or about the date of the receipt.

By Mr. Potter: All right, that is agreed to, if the Court please.

By Mr. Turnbull: That is a stipulation with counsel, is it?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has asked me to stipulate that the Security First National Bank of Los Angeles in 1920 or '21 or '22 was a separate corporation from the First National Bank of Los Angeles. That the First National Bank of Los Angeles was a National Bank organized
281 as a National Banking Corporation and the Security First National Bank was an independent corporation owned by the stockholders of the First National Bank of Los Angeles and handled securities for it.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check marked for identification as Exhibit "19" and I will ask you if that is your signature on that check.

A. Yes, sir.

Q. In whose handwriting is the check filled out?

A. In Leonard Woodruff's handwriting.

Q. You delivered that check to Mr. Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds?

A. No, sir.

Q. Did you receive the proceeds after the bonds were sold?

A. No, sir.

By Mr. Turnbull: What is the date of the check?

A. It is June 8, 1920.

By Mr. Turnbull: And the number?

By Mr. Potter: "19", we offer in evidence, if the Court please.

By the Court: All right, let it go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked for identification as Claimant's Exhibit "20", is that a
282 bill from Drake, Riley & Thomas?

A. Yes, sir.

Q. The bill receipted paid?

A. Yes, sir.

Q. I will ask you if there is any handwriting on the bottom of that bill.

A. Yes, sir.

Q. In whose handwriting is it?

A. Leonard Woodruff's.

Q. You know it is in Leonard Woodruff's handwriting?

A. Yes, sir.

Q. And that is his signature at the bottom?

A. Yes, sir, it is.

By Mr. Turnbull: We stipulate that the handwriting and the signature is that of Leonard Woodruff's and that the reading "Bought for Willie Mae Woodruff, paid out of her personal account" and that it was signed by Leonard Woodruff, and that notation was made about the time this bill was made out and stamped paid which was July 22nd, 1920.

By Mr. Potter: All right.

Q. Mrs. Woodruff, I hand you a check which has been marked for identification as Claimant's Exhibit "21", is that your check?

A. Yes, sir.

Q. Drawn in Leonard Woodruff's favor?

A. Yes, sir.

Q. And delivered to Leonard Woodruff?

A. Yes, sir.

283 Q. For what purpose please?

A. To buy bonds.

Q. And it is in what amount?

A. $350.00.

By Mr. Potter: Any objection to it?

By Mr. Turnbull: No objection.

By the Court: All right, let it go in.

By Mr. Potter: Mrs. Woodruff, I hand you an instrument which has been marked Claimant's Exhibit "22" and I will ask you what that transaction, what transaction that evidences.

By Mr. Turnbull: We object to that on the ground the instrument is not made by the witness, her signature is not on it and it purports to be made by someone by the name of Davis.

By Mr. Potter: I will withdraw that question.

Q. Mrs. Woodruff, is that a draft drawn against your account?

A. Yes, sir.

Q. For what amount?

By Mr. Turnbull: That calls for a conclusion of the witness, if it is a draft on her account it will show it was and for the amount paid, it doesn't show to be paid to anyone.

Q. Do you know a man by the name of William Davis whose name is signed to this instrument?

A. No, sir.

Q. Did you ever talk to him?

A. No, I don't think so.

284 Q. Did you ever talk to Mr. Davis?

A. No, sir.

Q. Were you in Los Angeles January 3rd, 1931, when that instrument was signed?

A. I can't answer that.

Q. Were you present when it was signed?

A. I don't know.

Q. Where did you get the paper?

A. From the records.
Q. From your records?
A. Yes, sir.
Q. The instrument purports to be a receipt for money in the sum of $5,001.20.
A. I think it was borrowed from my account or brought from my account some place.
Q. Have you got a receipt — this is a receipt for the money, you know how it was transferred?
A. It was transferred in the bank.
Q. Where were you in 1921?
A. I don't remember,
Q. This instrument only purports to be a receipt for money. This instrument does say the amount or the money was sent by telegram or telegraph to the credit of Herman Woodruff. I will withdraw my objection. I stipulate that the receipt was signed by William Davis and the money was transferred by telegraph from Ardmore to Los Angeles and placed to the credit of Herman Woodruff.

By Mr. Potter:

Q. All right Mrs. Woodruff, at whose request and whose benefit was that money wired by you?

285 By Mr. Turnbull: We object to that, that is invading the province of the Court and trying to charge that $5,000.00 to Leonard Woodruff. If the document shows it went to Mr. Leonard Woodruff I have no objection, Mr. Potter, Mr. Leonard Woodruff told her to send the money in consideration of—

Q. Just tell the Court about that transaction, Mrs. Woodruff.
A. Mr. Woodruff asked me to wire his brother $5,000.00 who was drilling a well for him at the time and he would give me $5,000.00 worth of bonds in return. Leonard Woodruff was having Herman Woodruff to drill an oil well at the time.
Q. Did you ever receive those bonds?
A. No, sir.

By Mr. Potter: We offer Exhibit "22" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me an acknowledgment by Anderson & Fox of Los Angeles dated the 23rd day of April, 1931, to Leonard Woodruff which reads, "We have this day received the following securities", and then follows the list of securities signed by Anderson & Fox. I will stipulate that instrument was issued on the day it bears and delivered to Leonard Woodruff. Counsel will you stipulate that Anderson & Fox were stock brokers of Los Angeles, California in 1931?

By Mr. Potter: Yes, we do.

286 By Mr. Turnbull: It is so stipulated.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit No. "23".

By the Court: Very well.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument which has been marked for identification as Willie Mae Woodruff's Exhibit No. "24" and I will ask you if that is your signature.

A. Yes, sir.

Q. Who filled that check out, Mrs. Woodruff?

By Mr. Turnbull: What do you mean, fill it out?

By Mr. Potter: That is who did all the handwriting in the check except the signature.

Q. The check is yours?

A. Yes, sir.

Q. And the check is made out to O. A. Slaughter, Anderson & Fox in the sum of $5,000.00?

A. Yes, sir, it is made to Slaughter, Anderson & Fox for $5,000.00.

Q. Is that check filled out in your handwriting?

A. The body of the check, it looks like Leonard's, I am sure it was.

Q. And that check was delivered to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds?

A. No, sir, I did not.

By Mr. Turnbull:

Q. Mrs. Woodruff, does it occur to you that the ink in the body of the check is the same as the signature?

287 A. Yes, sir, it does look like it.

Q. Was it filled out in your presence with O. A. Slaughter, Anderson and Fox's name put in at the time?

A. I don't remember.

Q. You have no independent recollection of it at this time?

A. No, sir.

Q. That was ten years ago?

A. Yes, sir.

Q. Did you know who Slaughter, Anderson and Fox were?

A. Stock brokers.

Q. When you signed the check you knew it was to be for $5,000.00?

A. I knew it was to be for bonds, I did not know the amount.

By Mr. Turnbull: The check we have just examined the witness about is dated May 16th, 1931, is marked for identification as Exhibit No. "24".

By Mr. Potter:

Q. Mrs. Woodruff, I will ask you if you ever received any proceeds from the sale or transfer of 165 shares of stock of the Security Corporation of Los Angeles.

A. No, sir.

By Mr. Turnbull: I will stipulate that the instrument marked as Exhibit No. "25" that the signature is the signature of A. O. Slaughter, Anderson and Fox by O. E. Davidson and that it is addressed to Mr. Leonard Woodruff and may be offered in evidence as Exhibit "25".

288 By Mr. Potter:

Q. Mrs. Woodruff, did you ever receive 165 shares of stock in the First National Bank of Los Angeles?

A. No, sir.

Q. Or any other amount from the sale of stock?

A. No, sir.

By Mr. Potter: We offer Willie Mae Woodruff's Exhibit No. "25" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me an instrument marked Willie Mae Woodruff's Exhibit No. "26" and I will stipulate that it is a duplicate yellow sheet of a receipt from the First National Bank of Los Angeles by the collection teller whose initials are placed thereon and it says, "Received of Willie Mae Woodruff the following described items, State of Utah, Salt Lake City, Utah, 5 bonds at $5,000.00 each, Nos. 71-2-3-4-5, amount $25,000.00," and the number of the receipt is stamped 22,885 in red, and the only date on it is 12-31 and I take it that means the year 1931 and the month of December.

By Mr. Potter:

Q. Did you ever receive anything in payment for those bonds?

A. No, sir.

Q. Were those bonds, Mrs. Woodruff, did you ever receive the money from the sale of those bonds?

A. No, sir.

289 Q. And the bonds were not delivered to you?

A. No, sir.

By Mr. Turnbull: I merely stipulated as to what the instrument is, what it shows.

By Mr. Potter:

Q. Is that Leonard Woodruff's signature?

A. Yes, sir.

By Mr. Potter: If the Court please, I am just trying to show she did not receive the money from the sale of the bonds and I am just proving she did not receive the money. We offer the exhibit in evidence.

By the Court: Very well.

By Mr. Turnbull: Counsel has handed me an exhibit marked Willie Mae Woodruff's Exhibit No. "27" which is a check of June 1st, 1931, for $2500.00 payable to Slaughter,

Anderson and Fox and I make the same stipulation as to the signature as I did on the receipt heretofore and on the receipt of Anderson and Fox attached to the check marked Exhibit "27". The receipt is numbered 16,044 being receipt in writing and it says, "Received of Leonard Woodruff, Seventy Five Hundred and No/100 Dollars on account," and it is marked further down, "Check 16-4 Willie Mae Woodruff" and I stipulate the check referred to in the receipt is the check marked Exhibit "27" and dated June 1st, 1931, and that the check was properly presented and paid at the bank.

290 By Mr. Potter:

Q. I hand you what has been marked as Willie Mae Woodruff's Exhibit "27", is that your check?

A. Yes, sir.

Q. Payable to Slaughter, Anderson and Fox?

A. Yes, sir.

Q. And attached thereto is a receipt for that check in favor of Leonard Woodruff, signed by Anderson and Fox?

A. Yes, sir.

Q. Was that check delivered by you to Leonard Woodruff?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive any bonds in consideration for the issuance of this check?

A. No, sir.

Q. You never received the proceeds from the bonds?

A. No, sir.

By the Court: Gentlemen, it is now 12:00 o'clock and we are going to recess until 1:30, at which time you will all be back.

(Whereupon Court recessed until the hour of 1:30 this day.)

291 Thereafter and on the 18th day of November, 1940, the above styled and numbered cause came on for further hearing before the Hon. George Clark, Referee in Bankruptcy, the parties hereto being present as heretofore, and it being now the hour of 1:30 P. M., Court met pursuant

to recess taken for the noon hour when the following proceedings were had herein:

WILLIE MAE WOODRUFF resumed the witness stand and having been duly sworn as heretofore shown, testified as follows:

By Mr. Potter:

Q. You are the same Mrs. Woodruff who was on the witness stand this morning?

A. Yes, sir.

Q. I hand you a check which has been marked Willie Mae Woodruff's Exhibit No. "28" and I will ask you if that is your check and was it drawn against your account?

A. Yes, sir.

By Mr. Turnbull: I have stipulated as to the signature on all of these checks and the endorsement on the check is the Security First National Bank of Los Angeles and Slaughter, Anderson and Fox, they are the endorsers on all of these checks made to this particular Company or party, and may be introduced in evidence without a further objection is made.

By Mr. Potter:

Q. I hand you Exhibit No. "28-A", it appears this $5,000.00 was credited to the account of Leonard Woodruff, did you deliver the check to Leonard Woodruff?

292 A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever get any bonds for this amount?

A. No.

By Mr. Turnbull: That check is made to Slaughter, Anderson and Fox?

By Mr. Potter: Yes, sir.

We offer in evidence Willie Mae Woodruff's Exhibit No. "28" and "28-A".

By the Court: Let them be admitted

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a check for $12,500.00 marked as your Exhibit No. "29", did you deliver that check to Leonard Woodruff?

A. I did.

Q. Did you fill that check out, it is filled out to Slaughter, Anderson and Fox, did you fill that out, Mrs. Woodruff?

A. No, Mr. Woodruff did, that is my signature.

Q. And you delivered that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

By Mr. Turnbull: That is payable to Slaughter, Anderson and Fox.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me a receipt of the First Security Company undated but together with a letter from the First Security Company of Los An-
293 geles, dated July 22nd, 1922, and you claim these go together, the receipt appears to be dated in 1923. I will stipulate you may introduce that in evidence together with the signatures of what they purport to be, but I don't think they go together and I stipulate they were issued on or about the date they bear.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit No. "29" and "29-A". We also offer in evidence Willie Mae Woodruff's Exhibit No. "30".

By Mr. Turnbull: It is addressed to Mrs. Willie Mae Woodruff, 262 South Mariposa Ave., Los Angeles, California?

A. Yes, sir.

By Mr. Turnbull: You accept the date it bears as being the true date and the signature to the letter, and it says, "Complying with Mr. Woodruff's instructions, we are today charging your account with the First National Bank of Los Angeles, $14,406.24 being payment in full for 15,000 par value New York Central Railroad refunding and improvement mortgage five percent bonds, due 2,013 at 94½ and accrued interest."

By the Court: All right, let it go in too.

294 By Mr. Potter:

Q. I hand you Willie Mae Woodruff's Exhibit No. "31" and I will ask you to state what that is.

By Mr. Turnbull: I have already entered into a stipulation as to Exhibit "31". I can't stipulate it has anything to do with that letter, they are a year apart.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a letter from the First Security Company, being marked as Willie Mae Woodruff's Exhibit "30" to you for $15,000.00 par value, New York Central Railroad refunding and improvement mortgage, did you ever receive that mortgage or those bonds?

A. No, sir, I never did.

Q. You know who did?

A. I suppose Mr. Woodruff did.

By Mr. Turnbull: I stipulate the First Security Company bought the bonds, that is the receipt for them.

By Mr. Potter: We offer Exhibit "31" in evidence, if the Court please.

By the Court: Let it go in.

By Mr. Turnbull: Willie Mae Woodruff's Exhibit No. "32" has been handed me and I stipulate that is the signature of the witness, Willie Mae Woodruff and that this check or draft shows that it was paid in the sum of $14,000.00 on October 30th, 1923.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "32" and I will ask you if that is your signature?

A. Yes, sir.

295 Q. What was that $14,000.00 for and who did you deliver it to?

A. It came to my account and Mr. Woodruff used it to pay for some of the rentals in Oregon and told me he would give me bonds in exchange for it.

Q. Did you ever get the bonds?

A. No, sir.

By Mr. Potter: We offer Exhibit No. "32" in evidence.

By the Court: Very well.

By Mr. Potter:

Q. I hand you two exhibits, No. "33" and No. "34", is that your signature on both of those exhibits?

A. Yes, sir.

Q. One is a draft for $7500.00 and one for $1500.00, you know who received that money and for what purpose?

A. Leonard Woodruff got the money and he bought cattle with the money and told me he would give me bonds for the use of the money.

Q. Did he ever do that?

A. No, I never did receive the bonds.

Q. Nor did you receive anything in exchange for these two checks?

A. No, sir.

By Mr. Turnbull: They are both dated October 29th, 1923?

By Mr. Potter: Yes, sir.

We offer in evidence Exhibit No. "33" and No. "34".

By the Court: All right, let them go in.

By Mr. Turnbull: Off the record counsel has submitted to me certain documentary evidence that are not originals. I am satisfied there would not be any purpose in re-
296 quiring the originals and I will stipulate that on September 21st, 1922, the First National Bank of Los Angeles, California, sent a telegram by Western Union to Mrs. Willie Mae Woodruff, Casper, Wyoming, reading as follows, "Transferred today, $30,000.00 to credit Leopard Woodruff as requested your telegram", signed First National Bank of Los Angeles, and that that telegram was one of a series which was preceded by a telegram of September 16, 1922, sent by O. H. Schock whom I will *stipulated* was connected with the First Security Company and also connected with the First National Bank of Los Angeles, and that that telegram was sent to Leonard Woodruff, postoffice General Delivery, Spokane, Washington, and it reads, "Can you arrange credit of about 35,000 for your account as

Frank expects call from comptroller any day. Your account over about 33,000 Willie Mae's balance about 26,000, wire collect." And that I will stipulate that in compliance with the first telegram that the witness who is now on the stand authorized the transfer from her bank account at Los Angeles in California to the account of Leonard Woodruff, the sum of $30,000.00 on the 21st day of September 1922, and that the funds were actually transferred from the account of the witness on the stand in that bank to the credit of Leonard Woodruff for which the First National Bank of Los Angeles issued its receipt to Willie Mae Woodruff which counsel has presented. The first telegram may be considered in evidence as Willie Mae Woodruff's Exhibit No. "35" and the other as Exhibit No. "36" and the receipt held by this witness, Willie Mae Woodruff dated September 21st, 1922, as Exhibit, No. "37".

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By Mr. Potter:

Q. You just heard the stipulation?

A. Yes, sir.

Q. What were you to receive in connection for the $30,000.00?

By Mr. Turnbull: What were you to receive, that is objectionable.

By Mr. Potter:

Q. Did you have any conversation with Mr. Woodruff just prior to transferring this money from your account to his account in the bank?

A. Yes, sir.

Q. What was he to give to you in return for this transfer of this money, what was the conversation?

A. That he needed this money to cover his overdraft and he would give me bonds in return for the transfer.

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Q. Did you agree to that?

A. Yes, sir.

Q. Did you receive any bonds in consideration of this $30,000.00?

A. No, sir.

Q. Have you ever?

A. No, sir.

By Mr. Turnbull: The instrument counsel now hands me is on the letterhead of the First Security Company addressed to Mrs. Willie Mae Woodruff, February 24th, 1922, and is signed by the First Security Company by W. A. Pike, and was sent in the ordinary course of mail and delivered to the witness on the date it bears.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you a letter marked for identification as Willie Mae Woodruff's Exhibit No. "38" from the First Security Company, advising you that $14,000.00 par value Chicago, Burlington & Quincy Railway Company first and refunding mortgages 5's due 2-1-71 and on the bottom of that instrument it says, "Paid and delivered March 4th," whose handwriting is that in?

A. The part at the bottom "paid and delivered March 4th," is in Leonard Woodruff's handwriting.

Q. Did you ever receive those bonds?

A. No, sir.

Q. Did you ever receive any proceeds from the sale of those bonds?

A. No, sir.

By Mr. Turnbull: It is understood that these instruments are in evidence?

299 By the Court: Yes, they are.

By Mr. Turnbull: When you accept my stipulation it is understood they are going in evidence.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me ten checks each of them signed as maker by the witness on the stand, Willie Mae Woodruff, each in favor of Leonard Woodruff, payee and endorsed Leonard Woodruff, and I stipulate and agree that each check was signed by the witness and delivered to the said Leonard Woodruff, the first one is for $2,500.00 dated June 17th, 1921, the next one is for $4,875.97, dated October 2nd, 1920, the third is for $300.00 dated February 24, 1921, the fourth is for $200.00 dated June 10th, 1921, the fifth is for $300.00 dated July 27th, 1921; the next is for $200.00 dated September 3rd, 1921, and another one for $1,000.00 dated May 31st, 1921, and another one for $10.-

750.00 dated December 11th, 1922, and one for $5,000.00 dated December 2nd, 1922, and the last one is dated October 10th, 1921 and is for $10,587.50. That finishes the reading of the checks except the check for $10,750.00 in addition to bearing the endorsement of Leonard Woodruff bears
300 the clearing house endorsement, "Pay to the order of any bank, banker, banks or trust company, prior endorsements guaranteed, Exchange National Bank, Tulsa, Oklahoma", and the endorsement of the American National Bank of Ardmore, Oklahoma, on December 11th, 1922.

By Mr. Potter: If the Court please, we offer in evidence Exhibit "39" being the ten checks just identified.

Q. I hand you the ten checks Mrs. Woodruff that have been identified as Exhibit No. "39" and I will ask you if all of those checks you signed?

A. Yes, sir.

Q. You delivered the checks to Mr. Woodruff?

A. Yes, sir.

Q. In the total sum of $41,813.47?

A. Yes, sir.

Q. I will ask you if you received any consideration for those checks?

A. No, sir, none.

By Mr. Turnbull: I object to that, that is invading the province of the Court.

By Mr. Potter:

Q. Did you receive anything for those checks?

A. No, sir.

Q. Were you supposed to receive anything for them?

By Mr. Turnbull: We object to that as a conclusion of the witness.

By Mr. Potter:

Q. For what purpose did you deliver the checks to Mr. Woodruff?

A. To invest in stocks and bonds for me.

301 Q. For you?

A. Yes, sir.

Q. Did you ever receive any securities whatsoever for this amount of money?

A. No, sir.

Q. Did any of the proceeds from those checks ever come back to you in any form?

A. No, sir.

By Mr. Turnbull: If the Court please, counsel has handed me a check made payable to Banks Huntley & Company dated May 20th, 1931, for $15,000.00, drawn on the Security First National Bank of Los Angeles and endorsed by rubber stamp, "Pay to the order of Bank of America of California, Bank Huntley & Company", and that check was signed by Willie Mae Woodruff, and I hereby stipulate and agree that that is the signature of Willie Mae Woodruff on the check and there is a rubber stamp on the back showing it was deposited to Banks Huntley & Company's credit at the bank and that Banks Huntley & Company were stock brokers maintaining an office in Los Angeles, California, at that time.

By Mr. Potter: Very well.

Q. Mrs. Woodruff, I hand you a check marked for identification as Willie Mae Woodruff's Exhibit No. "40" and that appears to be a check drawn against your account to Banks Huntley & Company in the sum of $15,000.00,
302. who filled in that check?

A. I did I think.

Q. Do you know who you delivered that check to?

A. It is my handwriting.

Q. To whom did you deliver the check?

A. Mr. Woodruff.

Q. For what purpose Mrs. Woodruff?

A. To buy bonds.

Q. Did you receive any bonds for that amount?

A. No, I never did.

By Mr. Potter: If the Court please, we offer Willie Mae Woodruff's Exhibit No. "40" in evidence.

By the Court: Let it go in.

By Mr. Turnbull: Counsel has handed me a certain check and I will stipulate that the instrument dated October 14, 1921, reading at the end, "First National Bank, Los Angeles, California" and the face reading "Memorandum

debit Willie Mae Woodruff $50,366.67", also written out for 50,000 State of Arizona Tax Anticipation Bonds, signed W. D. S. Hammond, Cashier, which signature is printed at the bottom, and over the signature is the name of W. C. Byron in handwriting. I will stipulate and agree that that is in the handwriting of Mr. Byron who was connected
303 with the bank on that date, October 14th, and which instrument is marked as Willie Mae Woodruff's Exhibit No. "41", and an instrument on a credit statement reading, "Bond Department, First Security Company", dated August 1st, 1922, sold by Mr. Schock, directed to Leonard Woodruff description bot. from $50,000.00 par value Arizona Tax Anticipation six percent gold bonds, due 9-15-1922 and totaling $51,140.78, and the next word in the middle of the statement, sold to 20 bonds, Kingdom of Netherlands, six percent gold bonds due 3-1-72 together with accrued interest, totaling $19,219.20 making a total of $31,921.58, making a total on the statement that you bought $51,140.78 and the total sold together with interest $19,219.20, and the last part of the typing reads "Balance due you check herewith $31,921.58," which instrument bears the rubber stamp marked paid August 1st, 1922, and signed First Security Company, Bond Department, and I stipulate that that instrument was issued by the First Security Company on the date it bears and is directed to Leonard Woodruff.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked Exhibit No. "42", addressed to Leonard Woodruff, the statement at the bottom "Balance due you check herewith $31,928.58". I will ask you if you received that
304 check.

By Mr. Turnbull: You mean if it was delivered to her?

By Mr. Potter:

Q. Did you ever receive the check?

A. I don't remember it.

Q. Did you ever receive any consideration for the $50,000.00?

By Mr. Turnbull: That is objectionable as calling for a

conclusion of the witness and is invading the province of the Court.

By Mr. Potter:

Q. Did you ever receive any Arizona Tax Anticipation Bonds?

A. No, sir.

Q. Or the proceeds from the sale of any such bonds?

A. No, sir.

By Mr. Turnbull: Do you claim counsel that she bought those $50,000.00 worth of bonds?

By Mr. Potter: Yes, sir, I do. It says for $50,000.00 worth of bonds.

By Mr. Turnbull: All right. Counsel has handed me a check drawn on the First National Bank of Los Angeles, dated May 18, 1921, in the sum of $14,353.12, the maker is Willie Mae Woodruff, the witness and the payee is the First National Bank of Los Angeles, and no endorsement on the back, pencil notation says, it might be bonds, the check shows it was cashed which indicates it was paid to the payee and I so stipulate that it was paid to the First National Bank of Los Angeles and on May 18th, the same day as the check an instrument bearing that date on the printed receipt head of the First National Bank of Los Angeles, Bond Department, receipt No. 280 signed by Schock, received from Willie Mae Woodruff $14,358.55, being payment for $15,000.00 par value Northern Pacific Great Northern Joint fifteen years six and a half commission bond at ninety-six and a half less accrued interest from 5-18-1921 to 7-1-1921, due 7-1-1936. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and the third instrument being the same date May 18, 1921, on the printed statement head of the Bond Department of the First National Bank of Los Angeles, and it says sold to Willie Mae Woodruff, Los Angeles, California, and under the head description it says $15,000.00 par value, Northern Pacific Great Northern Joint. Fifteen years, six and a half convertible gold bonds, due 7-1-1936, $14,475.00 and less six and a half percent accrued interest from 5-18 to 7-1 $116.45, making a total of $14,358.55,

305

the paid stamp thereon says, "Paid May 19, 1921. First National Bank of Los Angeles, Bond Department,
306 by C. D. Jones.

By Mr. Potter:

Q. I hand you the instrument which has been marked for identification as Exhibit "45" and I will ask you to look at the reading on the bottom of that, whose handwriting is that in?

A. Leonard Woodruff's.

Q. It says, "Due and collected January 1st, 1922"?

A. Yes, sir.

Q. Did you ever receive that money?

A. No, sir.

Q. That is Exhibit No. "45"?

A. Yes, sir.

Q. And Exhibit No. "43", that check was signed by you?

A. Yes, sir.

By Mr. Potter: If the Court please, I offer in evidence Exhibit No. "43", "44", and "45".

By the Court: All right.

By Mr. Turnbull: If the Coure please, counsel has handed me three instruments and I will stipulate that instruments marked Willie Mae Woodruff's Exhibits "46", "46-A" and "46-B" are "46" being a receipt by the cashier of the First National Bank of Los Angeles, dated 12-14-1921 and it says debit Willie Mae Woodruff, $9,709.69 for ten County of Eastland, Texas, five and a half percent bonds, due 1952 at ninety-six forty-four, accrued interest to 12-14-21, charged as per inst. from Mr. Leonard Woodward 12-14-
1921 and Exhibit "46" is a receipt of the Bond De-
307 partment, this is "46-A" a receipt of the Bond Department of the First Security Company in favor of Mrs. Willie Mae Wodruff for the same property being the same amount described in Exhibit No. "46" and also a letter from J. W. Durham, sales manager of Drake, Riley & Thomas for the same property, dated December 9th, 1921, being an offer by Drake, Riley & Thomas to sell Leonard Woodruff $10,000.00 worth of County of Eastland Texas, serial five and a half Highway Bonds, Serial E due 1948 on

a 5.75% basis and it is stipulated that the instrument bears the signature of the party as indicated thereon, and that the signatures thereto are genuine.

By Mr. Potter:

Q. I hand you Exhibit "46" and I will ask you if that was charged to your account.

By Mr. Turnbull: That is a conclusion of the witness, asking her to interpret an original instrument, it shows a deed to her for so much money. He asks her what those things mean, they show what they mean and I make no objection to their use.

By Mr. Potter:

Q. Did you get any of the proceeds from the $10,000.00 County of Eastland Texas Highway Bonds?

308 A. No, sir, not to my knowledge.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibits No. "46", "46-A" and "46-B".

By the Court: Let them go in.

By Mr. Turnbull: I will stipulate that the instruments now handed to me marked Exhibits Nos. "47", "47-A" and "47-B", "47" being a check to Drake, Riley & Thomas, for $15,000.00 dated May 18th, 1921, and endorsed by rubber stamp, "47-A" being a letter from Drake, Riley & Thomas March 22nd, 1921, to Leonard Woodruff and the letter is signed by J. W. Durham and Exhibit "47-B" being a statement on a printed letter-head dated March 22nd, 1921, it is on the letter-head of Drake, Riley & Thomas, which instrument was issued about the date it bears, that the signatures of the person and endorsees are genuine, that about the date this instrument bears that J. W. Durham was an officer of Drake, Riley & Thomas, this Exhibit No. "47-B" being addressed to Leonard Woodruff and is a list of stocks and bonds.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "47" being a check for $15,000.00 signed by you in favor of Drake, Riley

& Thomas, dated March 18th, 1921, will you state if
309 you know who filled out that check?

A. Leonard Woodruff.

Q. Did you deliver that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive those bonds?

A. No, sir.

By Mr. Potter: We offer Exhibit "47" in evidence.

By the Court: Very well.

By Mr. Turnbull: If the Court please, counsel has handed me a check dated May 17th, 1921, check drawn by Willie Mae Woodruff as maker in favor of Drake, Riley & Thomas, on the First National Bank of Los Angeles for $10,198.92, and it bears the endorsement of Drake, Riley & Thomas and attached to that check dated May 11th, I beg your pardon it is May 17th, 1921, the same day, and on the printed receipt of Drake, Riley & Thomas reading, Received of Willie Mae Woodruff the stock listed below, and one is the check for $10,198.92 on account to balance to date, and it says check on Exchange National Bank of Tulsa, and it goes on and lists five—four checks it is which makes a total of $9,513.12, together with other figures leaving a total on the balance of the statement of $9,862.87, and it is signed by

Drake, Riley & Th mas by J. W. Dunham. I stipulate
310 that check was signed by Willie Mae Woodruff for the purpose as testified by the witness and the first check in the sum of $10,198.92 is the same check referred to in the receipt attached thereto, and the reverse side of this receipt appears the following. I do not know in whose handwriting it is, but on the reverse side of this instrument is the following: "This is a deposit to my credit on this date May 17th, 1921, with Drake, Riley & Thomas, all other bonds and stocks being previously paid for in full", and it is signed "Kelly Springfields". Right under that signature is 15,000 paid for 15,000 U. S. Brazil paid for delivered June 17th, 1921, and we stipulate the check and the receipt were issued about the date they bear and the signatures are genuine.

By Mr. Potter:

Q. I hand you an instrument marked as Willie Mae Woodruff's Exhibit "48-A" on which you will see the writing on the back, whose handwriting is that?

A. Leonard Woodruff.

Q. Did you ever receive that stock or any money for the sale of that stock from Mr. Woodruff?

A. No, sir.

311 By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit "48-A" as well as Exhibits "47-A" and "47-B".

By the Court: Very well.

By Mr. Turnbull: Counsel has produced and I stipulate the check dated October 31st, 1921, on the First National Bank of Los Angeles, California, signed by Willie Mae Woodruff, the maker, and the First National Bank of Los Angeles the payee, in the sum of $26,000.00, to which is attached a printed statement No. 466 on which is printed The First National Bank of Los Angeles, Bond Department, received from Willie Mae Woodruff $26,000.00, being payment for 25,000 par value State of Arizona six percent bonds due 9-13-1922 at $100.25 and accrued interest to 10-31-1921, surplus to be credited back to same account with First National Bank, L. A. Delivery of the above described securities on a due bill therefor will be made in accordance with instructions below; and to which is attached a statement on which is printed The First National Bank of Los Angeles, in account with Willie Mae Woodruff, 262 So. Mariposa Avenue, October 31st, 1921, 25,000 State of Arizona Tax Anticipation Bonds at $100.25, total $25,062.50 accrued interest one
312 month fifteen days at six percent $187.50, making a total of $25,250.00, Nos. 401-425 inclusive. These instruments were signed the date they bear and the signatures placed there about the dates they bear, the signatures are genuine, that the instruments were issued by the persons they are purported to be signed by.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you an instrument marked Exhibit No. "49", to whom did you deliver that check?

A. To Leonard Woodruff.
Q. Is the check filled out in his handwriting?
A. Yes, sir.
Q. Did you ever receive any bonds for that check?
A. No, sir.
Q. What was that?
A. I thought Mr. Turnbull read where it was deposited back to my account, but I never received anything.

By Mr. Turnbull: I read it correct.

By Mr. Potter:

Q. Yes, it was read correct, $750.00 was deposited back to your account.
A. Yes, sir, I guess it was, I gave him the money to buy the bonds with, I don't know what he did with the bonds.
Q. You did not get the bonds?
A. No, sir.

By Mr. Potter: We offer in evidence Willie Mae Woodruff's Exhibit "49" and Exhibit "49-A" and Exhibit "49-B".

By the Court: All right.

313 By Mr. Turnbull: If the Court please, counsel has handed me a letter and I agree that this letter was written by Mr. Dunham on May 24th, 1921, to Leonard Woodruff, but I do not see where it has anything to do with this matter.

By Mr. Potter: This is a letter addressed to the debtor.

By Mr. Turnbull: It has not been offered as yet.

By Mr. Potter: This is a letter written by Drake, Riley & Thomas to Leonard Woodruff and I offer it in evidence, if the Court please.

By Mr. Turnbull: I object to it for the reason no foundation has been made laid to show it has anything to do with this matter, whether it is a letter with respect to some bonds I do not know. The basis of my objection is he is getting in evidence now every bond and every stock that Leonard Woodruff ever bought, apparently it has been shown to the

witness and she has been asked if she got the bonds and I don't think I should be put to the place of refuting it, it doesn't show anything. It doesn't say anything about Leonard Woodruff or any of Willie Mae Woodruff's money.

By Mr. Potter: Oh, yes, it does if the Court please.

By Mr. Turnbull: Yes it does. I will withdraw my objection.

314 By Mr. Potter: Willie Mae Woodruff's Exhibit "50" is dated May 24th, 1921, on the letterhead of Drake, Riley & Thomas, it is addressed to Leonard Woodruff, Esq. 262 S. Mariposa, Los Angeles, California. My dear Mr. Woodruff: We take pleasure in confirming sale to you when as and if issued for the account of Willie Mae Woodruff of $10,000.00 Government of the French Republic, 20 year external seven and a half percent bonds due June 1, 1941, at 95½ and interest.

We enclose herewith statement of the transaction and an interim certificate covering this purchase so that your funds will be drawing interest at the coupon rate. Yours sincerely, J. W. Dunham.

By Mr. Turnbull: Do you expect to show he ever bought any such bonds?

By Mr. Potter: Yes, I do.

By Mr. Turnbull: All right, as if and when issued.

By Mr. Potter: Yes, sir.

By Mr. Turnbull: Counsel has handed me a check marked Willie Mae Woodruff's Exhibit No. "51" dated July 7th, 1921. I will stipulate the instrument is a check signed by Willie Mae Woodruff, dated July 7th, 1921, for $12,745.00 in favor of Drake, Riley & Thomas, and that it bears the endorsement of Drake, Riley & Thomas and that it has been paid, and it is made by the witness on the
315 date it bears and cashed by the payee about that date.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "51"; in whose handwriting is that check?

A. It is in the handwriting of Leonard Woodruff except I signed the check.

Q. And also the $12,745.00 is in his handwriting?

A. He made it out.

Q. Did you deliver that check to Drake, Riley & Thomas?

A. No, I delivered it to Leonard Woodruff.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive the bonds?

A. No, sir, I did not.

Q. Exhibit No. "51-A" attached to Exhibit No. "51" is merely a statement of the First National Bank to Willie Mae Woodruff. We will pass that just at this time. As to Exhibit No. "52" I presume you stipulate as to that?

By Mr. Turnbull: Counsel has handed me Exhibit No. "52" which is dated April 25th, 1921, being receipt from the Bond Department of the First National Bank and it says received from Willie Mae Woodruff, $3,057.20, being payment for 3,000 par value Turlock Irrigation District six percent gold bonds at par and accrued interest to April 25th, 1921, due July 1st, 1951. And I stipulate with counsel that Exhibit "51-A" which counsel has attached to
316 "51" is a statement from the Bond Department of the First National Bank to Willie Mae Woodruff, dated April 25th, 1921, sold by O. H. Schock, 3,000 par value Turlock Irrigation District six percent gold bonds, due 7-1-1951 at $100.00 and the total amount is $3,057.00 plus $57.00 accrued interest from 1-1- to 4-25, and that receipt is marked paid April 26th, 1921 by the First National Bank of Los Angeles, the Bond Department, by C. D. Jones. We stipulate that those instruments were signed about the date they bear by the person who is purported to have signed them and delivered to the person to whom addressed.

By Mr. Potter.

Q. Mrs. Woodruff, did you ever receive the bonds mentioned in these statements and this check?

A. No, sir, I never did.

By Mr. Potter: If the Court please, we offer Exhibits "51-A" and "52" in evidence.

By the Court: Let them go in.

By Mr. Turnbull: Counsel has handed me three checks, each of which is drawn on the First National Bank of Los Angeles, each of which Mrs. Woodruff is the maker and each of which the First National Bank is payee, dated July 29th, 1921, in the sum of $25,000.00, principal sum,
317 and another check dated March 30th, 1921, in the sum of $5,000.00, and the third check dated June 6th, 1921, in the sum of $15,109.38, none of said checks being endorsed but each shows they were cashed by the payee, the First National Bank of Los Angeles. I stipulate each check was made by the witness and paid to the payee and for the amount shown on the dates they bear.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you three checks marked Willie Mae Woodruff's Exhibits "53", "54" and "55" and I will ask you if you filled those checks out.

By Mr. Turnbull: Do you accept the stipulation I made?

By Mr. Potter: Yes, sir.

A. Mr. Woodruff filled them out and I signed them, that is my signature.

By Mr. Potter:

Q. You delivered them to Mr. Woodruff?
A. I did.
Q. For what purpose?
A. To buy bonds.
Q. Were the bonds ever delivered to you?
A. No, sir.
Q. Were the proceeds from the sale of any of those bonds ever delivered to you?
A. No, sir.

By Mr. Potter: We offer Exhibits "53", "54" and "55" in evidence.

318 By the Court: Let the exhibits go in.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "56", I will ask you if you ever saw that instrument before.

By Mr. Turnbull: If the Court please, Exhibit No. "56" I will stipulate it is on the printed letterhead of The First Security Company of Los Angeles, California, the Bond Department, and is dated March 4, 1922, and it shows sold to Willie Mae Woodruff Los Angeles, California, 5,000 Kingdom of Netherlands 50-yr. six percent sinking fund gold bonds, due March 1, 1972, at 94. $4,700.00 and $1.67 accrued interest from 3-1 to 3-3, total amount $4,701.67, and that receipt is stamped paid March 4, 1922, by the First Security Company, Bond Department, and written across the face of that statement it says sold. I stipulate that instrument was issued on the date it bears and delivered to the person to whom it is addressed.

By Mr. Potter:

Q. I hand you the exhibit being No. "56" which has the word, sold on it, do you know whose handwriting that is?

By Mr. Turnbull: Do you accept the stipulation?

By Mr. Potter: Yes, sir.

Q. Did you ever receive $4,701.67 from the sale of the bonds?

A. Not to my knowledge I did not.

By Mr. Potter: We offer in evidence Exhibit "57".

319 By the Court: Very well.

By Mr. Potter:

Q. I hand you Exhibits "57" and "57-A" and "57-B" and "57-C".

By Mr. Turnbull: As to Exhibits "57", "57-A" and "B", "57" seems to be a debit charge, Willie Mae Woodruff, dated June 19, 1922, for $20,651.67, for certain bonds named therein, signed by the First National Bank of Los Angeles, Exhibit "57-A", that instrument bears the date of June 19, 1922, it is a printed receipt of the First National Bank of the First Security Company, the First Security Company Bond Department, and it is a receipt for the

$20,651.67 and being for the same bonds, being payment for 20,000 par value Venice Union High School District five percent bonds, $10,000.00 1923 at $102.66, $10,000.00 1942 at $104.19, and accrued interest to 6-19-1922. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and it is signed by the Bond Department of the First Security Company and Willie Mae Woodruff's Exhibit "57-B" is a printed statement on the letter-head of the Bond Department of the First Security Company and it is dated June 20th, 1922, sold to Willie
320 Mae Woodruff 10,000.00 Venice Union High School District due 7-1-1934 at $103.66 and $10,000.00 Venice Union High School District due 7-1-1942 $105.19, making a total of both items of $20,885.00 and discount five percent accrued interest from 6-19 to 7-1 amounts to $33.33 less one percent which is $200.00 and the certificate No. 2991 for $20,651.67 and it is stamped paid June 20th, 1922, First Security Company, Bond Department, and Willie Mae Woodruff's Exhibit "57-C" is a duplicate thereof.

By Mr. Potter:

'Q. Mrs. Woodruff, I will ask you if you received $20,000.00 worth of Venice Union High School District bonds as evidenced by that certificate?

A. No, sir, I did not.

Q. If the bonds were sold did you receive the money therefor?

A. I did not.

By Mr. Potter: I offer the exhibits in evidence.

By Mr. Turnbull: Do you accept my stipulation?

By Mr. Potter: Yes, sir.

By the Court: Let the exhibits go in.

By Mr. Turnbull: If the Court please counsel has handed me Exhibit No. "58" and "58-A". I stipulate that Exhibit No. "58" is a receipt from the First National Bank of Los Angeles, signature thereon being that of W. C. Bryan. I will stipulate that he was an officer of the First Na-
321 tional Bank of Los Angeles on the date the instrument bears which is March 3d, 1922, and it is a memorandum

debit Willie Mae Woodruff for $4,701.67 for 5-2500 Guilder Bonds of the Kingdom of the Netherlands 50 years six percent S. F. bonds due 1972 at 94, charged as per instructions 2-3-1922, and Exhibit No. "58-A" is No. 914, received from Mrs. Willie Mae Woodruff on March 3, 1922, $4701.67 being payment for 5-2500 Guilder par value bonds of the Kingdom of the Netherlands, 50 years six percent S. F. Bonds at 94, and accrued interest to 3-3-1922 due 1972. Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below, and it is signed Bond Department, First Security Company by Schock. I stipulate those instruments were issued by the person who purported to sign them on or about the dates they bear and delivered to the person to whom they were addressed about the dates they bear. Are these the same bonds heretofore mentioned in a former exhibit?

By Mr. Potter: No, sir.

322 By Mr. Turnbull: They are different bonds and counsel is not duplicating the item, it is a different item.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Exhibit No. "58" and it shows your account has been debited with $4701.67 for these bonds mentioned in this exhibit, and I want to ask you if you ever received those bonds.

A. No, sir, I did not.

Q. If the bonds were sold did you receive the money therefor?

A. No, sir, I did not.

By Mr. Turnbull: If the Court please counsel has exhibited to me Willie Mae Woodruff's Exhibit "59" which is a buy order signed by Leonard Woodruff for Willie Mae Woodruff on the printed buy order of the First Security Company, dated July 28th, 1922, salesman O. H. Schock, and it says please buy for my account and risk 20 shares First National Bank, Los Angeles, beneficial certificates, register in name of Willie Mae Woodruff, charge to her account with First National Bank, Los Angeles, and it is signed by Leonard Woodruff for Willie Mae Woodruff and the

price is $375.00 net. I stipulate the instrument is a buy order and is for 20 shares of the bank referred to in the letter now in evidence and being heretofore referred to in a previous exhibit.

By Mr. Potter: That is correct.

323 Q. Did you receive this 20 shares of First National Bank stock?

A. No, sir.

By Mr. Turnbull: Do you accept the stipulation in connection with the instrument?

By Mr. Potter: Yes, sir. If the Court please, we offer it in evidence.

By the Court: Let it go in.

By Mr. Turnbull: If the Court please, counsel has handed me five checks and I stipulate each check is drawn on the First National Bank of Los Angeles, the maker of each instrument being the witness now on the stand and the first one is dated November 12th, 1926, in the principal sum of $6,000.00, the payee is Leonard Woodruff and the endorsee is Leonard Woodruff. The second check is for $5,000.00 and being the same maker and the same payee and endorsed by Leonard Woodruff and that check is dated April 12th, 1926, the third is in the sum of $18,000.00 and is dated July 27th, 1925, payable to Leonard Woodruff and signed by Willie Mae Woodruff, that check was also cashed. The next check is dated February 9th, 1925, to Carlin & Company for $1592.06, endorsement by rubber stamp and deposited to the credit of Carlin & Company and the face of the check reads in addition to the sum of $1592.06 for seven insurance policies, one on an auto and other items. The next check is dated

324 December 29th, 1924, maker is Willie Mae Woodruff and the payee is Leonard Woodruff, amount of the check is $14,181.66, and it is endorsed by Leonard Woodruff. The next check is dated December 3rd, 1926, in the sum of $600.00, signed by Willie Mae Woodruff in favor of Jack Tomas, endorsed by Jack Tomas. On the back of the check it says, "For labor on my Oregon ranch. I owe W. M. W. this $600.00. L. J. W." I stipulate each check was made by the

witness on the stand and the signature of the persons thereon purported to be are genuine. The endorsements are as I have stated. Making a total of $45,374.26 of the six checks. This item for insurance, do you think it goes in here Mr. Potter?

By Mr. Potter: I don't think it should be in here.

By Mr. Turnbull: Will you deduct that from your total?

By Mr. Potter: Yes, sir, that will leave $43,078.20.

Q. Mrs. Woodruff, I hand you five checks here and I will ask you if you filled those checks out?

A. I filled out the one for $5,000.00 and one for $600.00.

Q. Did you deliver those checks to Mr. Woodruff?

A. Yes, sir.

Q. What was the purpose in delivering those checks to Mr. Woodruff?

A. That one of April 12th, 1926 for $5,000.00 was
325 to buy bonds and the one to Jack Thomas was for labor, he was to give me bonds for it.

Q. And the other one?

A. Leonard filled out that one for $18,000.00.

By Mr. Turnbull: That is dated July 27th, 1925?

A. He was to buy bonds with that.

By Mr. Potter:

Q. That is the $18,000.00 check?

A. Yes, sir, I don't know who filled these other two out.

Q. The checks dated December 29th, 1924, and November 12th, 1926, you don't know who filled those checks out?

A. No, I don't know who put the amounts in there.

Q. To whom did you deliver the checks?

A. To Leonard Woodruff. They were not always filled out when I gave them to him.

Q. For what purpose did you deliver those checks to Leonard Woodruff?

A. To buy bonds with and to invest in bonds.

By Mr. Potter: If the Court please, we offer the five checks in evidence.

By the Court: Very well.

By Mr. Turnbull: Counsel has handed me purported Exhibits No. "61", No. "61-A" and "61-B", and has asked me to stipulate concerning the same. Exhibit No. "61" was issued by the Assistant Cashier of the First National Bank of Los Angeles, May 18th, 1922, and it is a memorandum debit Willie Mae Woodruff $40,136.55 for 40 M. N. S. A. 4th and 4¼-1938 at $99.94, charged in account and ac-
326 cordance with instructions to Mr. Schock, and Exhibit "61-A" is on the statement of the Frist Security Company Bond Department to Willie Mae Woodruff, dated 5-19-1922 and it shows $40,000.00 price ninety-nine ninety-four one-hundredths dollars, principal $39,976.00, interest $160.55, total $40,136.55, and Exhibit "61-B" is a letter from the First Security Company signed by Mr. Schock May 18th, 1922, addressed to Willie Mae Woodruff, and it says: "Dear Mrs. Woodruff: Confirming my telephone conversation of today with Mr. Woodruff, I have sold you $40,000.00 U.S.A. 4th 4¼ Liberty Loan Bonds of 1938 at $99.94. and in accordance with hi. instructions I am today charging your account with the First National Bank of Los Angeles $40,136.55, being payment in full for the above as per detailed statement enclosed herewith. At your convenience I shall be pleased to have you or Mr. Woodruff call to accept delivery of the above bonds. Very truly yours, First Security Company, By O. H. Schock." I stipulate that Exhibit No. "61" bears the endorsement of the Assistant Cashier of the First National Bank and I stipulate that same was charged to the account of Willie Mae Woodruff on the date it bears which was May 18th, 1922, in the sum of $40,136.55.

327 By Mr. Potter: I accept the stipulation.

Q Mrs. Woodruff, I hand you Exhibit No. "61" showing the purchase of $40,000.00 worth of Liberty Loan Bonds. did you receive the bonds?

A. No, sir.

By Mr. Potter: I offer these three exhibits in evidence.

By the Court: All right.

By Mr. Potter:

Q. I hand you Exhibit No. "62" which is a check.

By Mr. Turnbull: Yes, as to Exhibit No. "62", "62-A" and I will state the check Exhibit "62" bears the signature of Willie Mae Woodruff dated April 13th, 1923, for the sum of $8,984.64, and it is made payable to Drake, Riley & Thomas and bears the endorsement of Drake, Riley & Thomas to which is attached Exhibit "A" on the printed statement of the Company dated April 12th, 1923, addressed to Willie Mae Woodruff and it says 15,000 Pacific Gas & Electric Corp., First and Ref. 5½ S price 98, interest accrued four months eleven days $300.30, maturity December 1st, 1963, making a total of $15,000.30 and it says paid by credit on books of $6,015.66 and check for *for* $8,984.64
328 from Mrs. Woodruff, and as to Exhibit "62-B" the slip attached thereto I can't stipulate concerning that, it says, "This bond belongs to Willie Mae Woodruff, $15,000.00 Pacific Gas & Electric Company" signed by Leonard Woodruff. I don't know anything about that.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you herewith Exhibit "62" and I will ask you if you received the $15,000.00 Pacific Gas & Electric Corporation bond?

A. No, sir.

Q. Look at Exhibit No. "62-B", do you know whose handwriting that is? There is apparently two handwritings on that slip, do you know anything about either or both of them?

A. This one in ink was written by Leonard and the one in pencil I don't know about it.

By Mr. Turnbull: May I examine her on the last one?

By Mr. Potter: Yes, sir.

By Mr. Turnbull:

Q. I notice this Exhibit "62-B", the first part of it says account Mrs. Willie Mae Woodruff, that is in pencil?

A. Yes, sir.

Q. You don't know whose handwriting that is?

A. No, I do not.

Q. These bonds belong to Willie Mae Woodruff, $15,000.00 and it has Leonard Woodruff's name at the bottom, is that his handwriting?

A. Yes, sir.

Q. This Exhibit "62-B" is a narrow yellow slip about two and a half inches wide?

329 A. Yes, sir.

Q. Where did you get that slip?

A. It came out of Mr. Woodruff's file when the income tax people left.

Q. It says these bonds belong to Willie Mae Woodruff, did you ever see any other instrument to which this slip was attached?

A. No, sir.

Q. Were you present when that instrument was signed?

A. No, sir.

Q. Opposite the signature at the extreme left-hand corner it says, "Signed", who wrote that?

A. I think it was Leonard.

Q. And the rest of it was written by Leonard?

A. Yes, sir.

Q. Did you ever see him put "Signed" before his name?

A. Yes, I have.

By Mr. Turnbull: That is all.

By Mr. Potter: If the Court please, we offer the three exhibits in evidence.

By the Court: All right.

By Mr. Turnbull: If the Court please, counsel has handed me a check marked Willie Mae Woodruff's Exhibit No. "63" in the sum of $64,000.00, and it is drawn on the First National Bank of Los Angeles, signed by Willie Mae Woodruff in favor of the First National Bank and I will stipulate that her signature on the check is genuine, and that the amount of money was paid and charged to the account of Willie Mae Woodruff.

330 By Mr. Potter: You do not stipulate as to where the funds went?

By Mr. Turnbull: No, sir, I do not.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Willie Mae Woodruff's

Exhibit No. "63" and will ask you if you know whose handwriting that check is filled out in.

A. Leonard Woodruff's.

Q. Did you deliver that check to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds.

By Mr. Turnbull: And the date please?

By Mr. Potter: March 4th, 1922.

By Mr. Turnbull: Do you agree that is the date of the check?

By Mr. Potter: Yes, that is correct. The bank mark shows paid March 4th, the year is not clear.

By Mr. Turnbull: It is 1922, you agree to that?

By Mr. Potter: Yes, sir. If the Court please, I offer the check, No. "63" in evidence.

By the Court: All right.

By Mr. Turnbull: Counsel has presented me with a slip marked Willie Mae Woodruff's Exhibit "64", and I will state that I have seen the signature of J. W. Dunham before on written instruments and I will stipulate this in-

331 strument reads, "Received the securities as listed hereon from Leonard Woodruff, 12-13-1921, Drake, Riley & Thomas, by J. W. Dunham." If the Court please, I stipulate that is the signature of Mr. Dunham, an officer of the Company and on the reverse side it reads, $15,000.00 Kelly Springfield Tire Company eight percent bonds, 1931, temporary, and the word delivergd and right under it it says, L.W., and under that it says "Marked in envelope with Mrs. Woodruff's name", and under that "Register in N.O. Willie Mae Woodruff", and then under that it says Canadian Northern Ry. Company, twenty-five years 6-1/25 of 7-1-1946 (temporary) and then under that it says delivered L.W., and below that there is $15,000.00 French S.S. 1946, and it says delivered L.W. and then there is a line drawn and below that is 300 shares Sears Roebuck delivered L.W. In each instance where the word delivered it is apparent that is the handwriting of Leonard Woodruff, and,

the word "delivered" is in his handwriting. I stipulate that instrument was issued in respect to those securities on the date it bears which is December 13th, 1921, and it may be introduced in evidence as Exhibit "64".

332 By Mr. Potter: All right, we agree to that.

By Mr. Turnbull: Counsel has handed me an instrument marked as Exhibit "65", "65-A", "65-B", "65-C" and "65-D" and requests the following stipulation which I agree to. Exhibit No. "65" is on the letterhead of the First Securities Company of Los Angeles, dated February 9, 1925, addressed to Mrs. Willie Mae Woodruff, 262 S. Mariposa, Los Angeles, California. "Dear Mrs. Woodruff, Enclosed is a statement covering the sale of your $10,000 L.A. Gas & Electric Corp. 6% bonds of 1942 and purchase of $10,000.00 Pacific Steamship 6½s showing a balance due you of $655.14 which we have today credited to your checking account with the First National Bank as per duplicate deposit tag attached. Yours very truly, Signed O. H. Schock", and attached to that is Exhibit "65-A" on the form of a duplicate slip of the First National Bank dated the same day, February 9, 1922—1925 if the Court please, Willie Mae Woodruff by Bond Agency, and down under where it says Checks 16-54, $655.14 and it is stamped on the slip "Duplicate of original deposit ticket," and it is initialed by some person as cashier, to which is also at-

333 tached Exhibit No. "65-B" on the printed statement of the First Security Company Bond Department addressed to Willie Mae Woodruff, 262 So. Mariposa Avenue, Los Angeles, California, and then below that it says, $10,000.00 Los Angeles Gas & Electric Corp. Series H. Gen. and Ref. Mtg. six percent gold bonds Nos. M-4661-70 due 3-1-1942, price one hundred two and a quarter, amount $10,225.00 and accrued interest 9-1- to 2-6- $258.33 and it makes a total of $10,483.33, and then $10,000.00 Pacific Steamship Company First Pfd. Marine equipment mortgage six and a half percent Serial Gold Bonds due bill No. 6466 due 1-1-1940 price $97.65, amount $9,765.00 interest accrued 1-1 to 2-6, $63.19, making a total of $9,828.19. Balance credited to your checking account First National Bank, Los Angeles, $655.14, and Exhibit "65-C" is an invoice to Willie Mae Woodruff which is a duplicate of the preceding one, "65-B".

Exhibit No. "65-D", on the letterhead of the First Security Company, the left-hand corner being torn off, and it bears date of March 16th, 1925, addressed to Mrs. Willie Mae Woodruff, 262 S. Mariposa, Los Angeles, California, and it reads, "Dear Madam: You are advised that the permanent Pacific Steamship Company, six and a half due serially are ready for delivery.

334 If you will deposit your temporary certificates for the above with us we will be pleased to forward them for exchange and delivery to you upon the securities when received by us. Yours very truly," Signed "O. H. Schock". On the bottom of this exhibit there is certain handwriting which I decline to stipulate anything about, as I do not know anything about it. I do stipulate that the instruments which I have read to your Honor are genuine and the names purported to be signed thereto are genuine and they were delivered on about the date they bear. Do you accept this stipulation?

By Mr. Potter: Yes, sir, I do, and we offer the exhibits in evidence.

Q. Mrs. Woodruff, I hand you Exhibit "65-D" with respect to this writing at the bottom, whose handwriting is that?

A. I do not know as to that, but it is Leonard Woodruff's signature at the bottom.

Q. You mean the L.J.W. at the bottom was signed by Leonard Woodruff?

A. Yes, sir, and the rest of it I do not know about.

By Mr. Turnbull: If the Court please, I do not have any objection to the exhibits except Exhibit "65-D", the writing at the bottom of that exhibit, I object to it at this time.

335 By the Court: Very well.

By Mr. Turnbull: Counsel has handed me Exhibits "66", "66-A", "B" and "C", with respect to "66-A", I will stipulate that is a receipt signed by the First Security Company and the signature is that of Mr. Schock thereon, it is dated February 5, 1925, and it reads in part, received from Willie Mae Woodruff, $5161.94 being payment for

5,000 par value Pacific Dock and Term. Company, first mortgage six and a half percent due 1929, at 101 and accrued interest to 2-5-1925, and principal $5,050.00 and interest $111.94, making a total of $5,161.94. Exhibit "66-B" is a buy order purchase of Mrs. Willie Mae Woodruff dated February 5, 1925, for ten $1,000.00 bonds of the Los Angeles Gas & Electric Company which matures in 1942 and down at the bottom it says payment and delivery instructions "Paid for Pac. Steamship Company, 6½" and it is signed by O. H. Schock, and the numbers are given and there are certain things on the exhibit which I cannot read. Exhibit "66-C" is a letter of the First Security Company dated April 7th, 1925, addressed to Leonard Wood-
336 ruff, 262 S. Mariposa, Los Angeles, California. Dear Sir: At your convenience kindly call and take delivery of the Permanent Pacific Steamship Company 6½, 1940, exchange for your temporary certificate recently deposited with us. Kindly bring our receipt for surrender. Yours very truly, O. H. Schock. And Exhibit No. "66" is a letter from the First Security Company to Leonard Woodruff, and it says, attached hereto is my receipt No. 4065, showing $5,161.94 received from Willie Mae Woodruff for $5,000.00 Pacific Dock and Terminal first 6½ of 1929.

There is also attached duplicate deposit tag for $300.00 which represents matured coupons of September 1st, 1924, which were attached to the $10,000.00 L.A. Gas & Electric 6 S. of 1942, which I took today in payment for $10,000.00 Pacific Steamship 6½ of 1940. Yours very truly, O. H. Schock. If the Court please, I stipulate that those instruments are genuine instruments, that is they were signed by the person purported to have signed them and on or about the date they purport to bear.

By Mr. Potter: We offer the exhibits in evidence, if the Court please.

337 By Mr. Turnbull: Do you accept the stipulation?

By Mr. Potter: Yes, sir, I do.

Q. Mrs. Woodruff, I hand you two checks marked as Exhibits Nos. "67" and No. "68", is that your signature attached to those checks?

A. Yes, sir.

Q. One check is for $18,000.00 and one for $9,415.66, those checks bear your signature?

A. Yes, sir.

By Mr. Turnbull: I will stipulate the signatures are hers.

By Mr. Potter:

Q. You filled out the checks?

A. No, sir.

Q. You deliver the checks to aayone?

A. To Mr. Woodruff, yes, sir.

Q. For what purpose?

A. To buy bonds.

Q. Did you receive the bonds in exchange for those two checks?

A. No, sir.

Q. Both checks are payable to the First National Bank?

A. Yes, sir.

Q. The First National Bank of Los Angeles is No. "67" and No. "68" says to the First National Bank?

A. Yes, sir, they were both to go to the First National Bank of Los Angeles.

By Mr. Turnbull: If the Court please, they were received by the First National Bank of Los Angeles, and I so stipulate.

By Mr. Potter: We offer the two checks in evidence, if the Court please.

338 By the Court: All right, let them be admitted.

By Mr. Potter:

Q. As to Exhibit No. "69" and No. "69-A", Mrs. Woodruff, is that your signature on "69"?

A. Yes, sir.

By Mr. Turnbull: If the Court please, counsel has handed me Exhibit No. "69" and I will stipulate the check is signed by Willie Mae Woodruff in favor of Drake, Riley & Thomas, dated May 13th, 1924, in the sum of $8,970.00, and it is endorsed by Drake, Riley & Thomas and "69-A" is the printed letterhead or the hand bill of Drake, Riley & Thomas, dated May 13th, 1924, sold to Mrs. Willie Mae

Woodruff, Los Angeles, California, 100 shares Southern Calif. Edison Company six percent Preferred Stock, price $90.00, $9,000.00, interest dated June 1st less eighteen days $30.00, leaving a total of $8,970.00, and it is stamped paid by Drake, Riley & Thomas, May 13th, 1924. I stipulate the instruments are what they purport to be, the signatures are genuine, the money represented by the check of $8,970.00 was paid to the maker, Drake, Riley & Thomas and that it represents purchase price of the Southern California Edison Company stock.

339 By Mr. Potter:

Q. Mrs. Woodruff, did you get that 100 shares of Southern California Edison Company stock?

A. No, sir.

Q. If that stock was sold did you get the benefits thereof?

A. No, sir, I never did.

By Mr. Potter: We offer the exhibits in evidence.

By the Court: Let them be admitted.

By Mr. Potter: Mr. Turnbull, I hand you Exhibits No. "70" and No. "70-A", and ask you if you desire to stipulate concerning those instruments?

By Mr. Turnbull: As to Exhibits No. "70" and "70-A" I stipulate that the first one is a check signed by Willie Mae Woodruff as the payee in favor of the First Security Company, dated 4-9-1923, and it is in the sum of $19,880.00 and the check is drawn on the First National Bank of Los Angeles, that check is properly endorsed and was cashed, it was paid by the bank on which it was drawn, and No. "70-A" is an invoice on the printed form of the First Security Company and it reads to Willie Mae Woodruff, sold to 20,000 Union Oil and California Serial six percent gold bonds, Serial B, due bill 4221, due 4-1-1926, price 99¼, amount $19,850.00, accrued interest 4-1 to 4-10 $30.00, making a total of $19,880.00 and it is stamped paid April
340 19th, 1923, by First Security Company, Bond Department by Farrel. I stipulate those instruments were issued on the dates they bear and delivered to the person addressed therein on the dates they bear and that the signatures are genuine.

By Mr. Potter:

Q. Mrs. Woodruff, did you receive the $20,000.00 Union Oil of California bond?

A. No, sir.

By Mr. Potter: We offer in evidence Exhibits "70" and "70-A".

By the Court: Let them be admitted.

By Mr. Turnbull: Counsel has handed me Exhibits No. "71" and "71-A" and I stipulate that "71" is a check of Willie Mae Woodruff to the First Security Company on June 7th, 1923, in the sum of $15,500.00 and that they collected the money represented by the check, and Exhibit "71-A" is a statement on the printed form of the First Security Company Bond Department to Willie Mae Woodruff, salesman Schock, sold to $15,000.00 City of Los Angeles Water Works 4½ No. M. 10230 44 due 12-1-1929 price $100.25, amount $15,037.50, and the accrued interest was $45.00 making a total of $15,082.50, and it shows a balance
341 due you of $417.50, which is credited to your account in the First National Bank. I stipulate those instruments were properly signed at the time they were issued, the dates shown thereon.

By Mr. Potter:

Q. Mrs. Woodruff, did you receive the bonds represented by this check?

A. No, sir, I did not.

Q. The credit of $417.50 shown on Exhibit "71-A" was credited to your account?

A. Yes, sir, I presume so.

Q. But you did not receive the bonds or the proceeds therefrom?

A. No, sir, I did not.

By Mr. Turnbull: You accept my stipulation?

By Mr. Potter: Yes, sir, I do.

By Mr. Turnbull: And at that time she was credited with $417.50?

By Mr. Potter: Yes, sir, that is correct. We offer the exhibits in evidence.

By the Court: All right.

By Mr. Turnbull: Counsel has handed me Exhibits "72" and No. "72-A" and "B", if the Court please. First in respect to Exhibit No. "72" it is a check by Willie Mae Woodruff and is dated June 16th, 1922, in the amount of $17,500.00 made payable to Drake, Riley & Thomas, and endorsed by Drake, Riley & Thomas, and it shows on
342 the back that the money was paid to Drake, Riley & Thomas, and as to Exhibit No. "72-A" it is a statement of account to Leonard Woodruff, dated May 27, 1923, from Drake, Riley & Thomas and it shows the following stocks and bonds listed thereon: June 16, 1922 Cash Credit $17,500.00, June 15, 1922, 300 Sh. Cuban Amer. Sugar $7,155.00, July 7, 1922, (6/13) 5 M. San. J. Lt & Pr. 6/50 $5047.50, July 7, 1922, (6/13) 5 M. Union Oil of Calif. 5/31 $4861.80, July 7, 1922, 5 M. S.J. Lt. & Pr. 6/50 Credit $5,080.00, July 7, 1922, 5 M. Union Oil of Calif. 5/31 Credit $4753.47, July 7, 1922, 6/13 5 M. Crane Creek 8/6 6/32 $5,041.00, July 7, 1922, 6/13 5 M. Sunnyside Sp. $5041.00, July 24, 1922, Union Oil Cpn. Credit $125.00, March 15, 1923, 400 Sh. Cuban Amer. Sugar Credit $14,122.50, March 15, stamps Amer. Sugar $1.60, March 17, 1923, 200 Sh. General Motors Credit $2955.00, March 17, Stamps General Motors $8.00, March 19, 1923, 100 Sh. Cuban Amer. Sugar Credit $3515.00, March 19, 1923, Stamp Amer. Sugar .40, Total charges $27,156.30, Total Credits $48,050.97, Credit Balance $20,894.67."

343 As to Exhibit "72-B", I can't identify or stipulate concerning it. I would have to ask Mr. Woodruff as to that, I cannot stipulate as to it. With respect to instrument Exhibit No. "72" and "72-A" but not as to "72-B", the signatures are genuine and they were issued by the persons they are purported to be issued by and delivered to the persons they were supposed to be delivered to.

By Mr. Potter: If the Court please, I will withdraw Exhibit No. "72-B" as Exhibit No. "72-A" shows the credit we are seeking to show.

By Mr. Turnbull: On the reverse side of Exhibit No. "72" which is the check there is certain handwriting that I want to ask Mr. Woodruff about, pencil notation that is

very fine handwriting, and it looks like "Republic France Bond bought by W.M.W. sold and spent by L.J.W." I do not object to Exhibit "72" except the part I have just read on the back and that is subject to proof.

By the Court: All right.

By Mr. Potter:

Q. I hand you Exhibit No. "73", what is that Mrs. Woodruff?

By Mr. Turnbull: I will stipulate, if the Court please, that that is a memorandum debit slip of the First National Bank of Los Angeles, California, dated September 29, 1921, and it says debit Willie Mae Woodruff, $10,197.87 for
344 ten $1,000.00 L.A. City School Bond District five and a half percent bonds, for 5,000 due 11-1-1925 and 5,000 due 11-1-1923 in accordance with your instructions and as per our letter of 9-28-1921, and it is signed by the Cashier by A. C. May, Jr., Vice President, and is endorsed on the back L.A. City Schools Exemption Taxes, L.W., F. Security Company or First National Bank and it is stenciled paid. I stipulate that the signatures thereon are genuine. As to the pencil notation on the back I do not know anything about that.

By Mr. Potter:

Q. Look at the pencil notation on the back and state whether or not you know whose handwriting that is in.

A. Leonard Woodruff's name.

By Mr. Potter: If the Court please I would like to offer it in the record.

By Mr. Turnbull: I object to it, Mr. Woodruff is not here, I object to his reading it in evidence until it is properly identified.

By Mr. Potter: I offer this paper, this exhibit in evidence, the handwriting has been identified as that of Leonard Woodruff's.

By Mr. Turnbull: That does not prove it is true, it is hearsay to anyone.

By Mr. Potter: You can introduce any evidence subject to cross examination on that particular point.

345 By Mr. Turnbull: I have asked that the debtor be here and that he be produced today and he is not here, and my point is that merely proving his handwriting does not prove the recitals of the handwriting.

By Mr. Potter: It is his handwriting, we have shown it and we have a right to introduce any writing signed by him.

By Mr. Turnbull: You can't put it in evidence to prove the truth of the writing.

By Mr. Potter: That is up to the Court, the rule of evidence will permit if, I believe.

By the Court: The writing on the back is not binding here otherwise let it go in.

By Mr. Turnbull: Exhibit No. "74" is a check signed by Willie Mae Woodruff to the First National Bank of Los Angeles dated 12-27-1924 in the sum of $4871.67 and that the check has been paid and that "74-A" is a printed receipt from the First Security Company and signed by Schock dated the same day as the check, Exhibit No. "74", and it says, received from Willie Mae Woodruff $4871.67, being payment for $5,000.00 par value Central Arizona L. & P. six percent bonds, 1942, at 97 and accrued interest to 12-27-1924. Delivery of the above described securities or a due bill therefor will be made in accordance with
346 instructions below. Principal $4850.00 interest $21.67, total $4871.67, and it is signed by First Security Company by Schock, and the amount of the check and the receipt are the same and we stipulate that instrument was issued on the date it bears and the signatures are genuine, and that the money was received by the First National Bank of Los Angeles on December 29th, 1924, do you agree to that?

By Mr. Potter: Yes, sir, I do.

By Mr. Turnbull: And the instruments were delivered to whom they were addressed?

By Mr. Potter: Yes, sir, that is true.

Q. Mrs. Woodruff, did you receive the 5,000 Central Arizona L. and P. Bonds?

A. No, sir.

Q. If the bonds were sold and disposed of did you receive the money therefor?

A. No, sir, I did not.

By Mr. Potter: We offer Exhibit No. "74" and Exhibit "74-A" in evidence.

By the Court: Let the exhibits go in.

By Mr. Turnbull: If the Court please, counsel has handed to me Exhibits Nos. "75", "76" and "77" and I stipulate that Exhibit No. "75" is a check signed by Willie Mae Woodruff, payee, to the First National Bank, dated 11-7-1924, in the amount of $5,000.00 and it has a notation on the back, payment on First National Bank stock. Exhibit No. "76" is a check signed by Willie Mae Wood-
347 ruff as maker to the First Security Company, payee, dated July 8th, 1924, in the amount of $10,826.40, endorsed the First Security Company and Exhibit No. "77" is a check on the First National Bank of Los Angeles, they are all drawn on the First National Bank and this one is dated September 20th, 1920, and the payee is Drake, Riley & Thomas, the maker is Willie Mae Woodruff, in the amount of $14,552.61, and it is endorsed by Drake, Riley & Thomas, and that they received the money thereon. We stipulate that the signature thereon is genuine and that the checks were delivered on or about the dates they are dated.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you three checks, Exhibits Nos. "75", "76" and "77", and I will ask you if you know who filled out any portion of the checks except your signature thereto.

A. No, that is my signature.

Q. You have referred to Exhibits "76" and "77", Mr Woodruff filled those out?

A. Yes, sir.

Q. Did you deliver the checks to him?

A. Yes, sir.

Q. For what purpose?

A. To buy bonds for me.

Q. Did you ever receive any of the bonds?

348 A. No, sir.

Q. As to Exhibit No. "75", did you fill out that check?

A. That is my signature to it.

Q. Who did you deliver the check to?

A. Leonard Woodruff.

Q. For what purpose?

A. To buy bonds.

Q. Did you ever receive the bonds?

A. No, sir.

Q. Or the proceeds therefrom if the bonds were improperly disposed of?

A. No, I never did.

By Mr. Potter: We offer the three checks, Exhibits Nos. "75", "76" and "77" in evidence, if the Court please.

By the Court: Let them go in.

By Mr. Turnbull:

Q. Mrs. Woodruff, I notice a notation on the check Exhibit No. "75" which says, "Payment on First National Bank stock," whose handwriting is that?

A. I don't know.

Q. That same handwriting has been on a lot of other—of these checks, does that look like Leonard's writing?

A. No, I don't know whose it is.

Q. Do you know when that writing got on the check, payment for stock?

A. No, I don't know.

Q. To refresh your recollection it might have been for bonds or it might not have been for bonds but it might have been for stock of the bank, would that refresh your memory at all?

A. No, it don't.

349 By Mr. Turnbull: All right, that is all. Counsel has offered me Exhibits Nos. "78", "78-A" and "78-B" and I offer the following stipulation: "78" is a debit slip issued by the First National Bank of Los Angeles showing that bank had debited the account of Willie Mae Woodruff for investment $26,500.00 on March 5th, 1923, and

it is signed by Jacobs, Assistant Cashier, and Exhibit No. "78-A" is a statement from the First Security Company dated December 29th, 1924, received from Willie Mae Woodruff, $14,181.66 being payment for 15,000 Government of the French Republic 77 External Bonds at ninety-four cents and accrued interest to December 29th, 1924. Delivery of the above described securities or a due bill therefor will be made in accordance with instructions below, and it is signed by the First Security Company, and Exhibit No. "78-B" is a debit charge to Willie Mae Woodruff under date of February 26th, 1925, for investment according to instructions $15,000.00 signed by Jacobs, Assistant Cashier of the First National Bank of Los Angeles, and Exhibit No. "78-C" is dated the 10th day of April, 1923, issued by the Bond Department of the First Security Company for $19,880.00, being pay-
350 ment for $20,000.00 Union Oil Company of California, Series D, six percent bonds due 1926 and $99.25 accrued interest, April 10th, 1923, signed by the First Security Company by Schock. I stipulate those instruments were signed by the parties who purported to sign them and the signatures are genuine and that the person who signed them had authority to sign them and they were delivered to the person to whom they were addressed on the dates they bear.

By Mr. Potter:

Q. Mrs. Woodruff, with reference to Exhibit "78-B", the debit slip for investment according to instructions, who gave instructions for that investment?

By Mr. Turnbull: If the Court please, we object to that, that instrument is in writing and speaks for itself.

A. Well all I know, I did not.

By Mr. Potter:

Q. Who was authorized to give instructions then?

A. Mr. Woodruff.

Q. Did you authorize him to so instruct the bank?

A. Yes, sir.

Q. Exhibit No. "78" is a debit slip for $26,500.00 for investment, did you instruct them as to that investment?

A. No, sir, Mr. Woodruff did.

Q. As your agent?

A. Yes, sir.

351 Q. As to Exhibit "78-A", did you receive the $15,000.00 worth of Government of French Republic bonds?

A. No, I did not.

Q. Exhibit "78-B", if the Court please, we will withdraw that exhibit. I believe that completes our exhibits but it does not complete our evidence.

By the Court: All right, we are going to recess now until 9:00 o'clock in the morning, at which time the parties hereto will be back and ready to proceed.

Thereafter and on the 19th day of November, 1940, the above styled and numbered cause came on for further hearing herein at the hour of 9:00 o'clock A. M., the parties hereto being present as heretofore and having announced ready to proceed, the following proceedings were had herein:

MRS. WILLIE MAE WOODRUFF, recalled, having been duly sworn as required by law, testified as follows:

Further Examination.

By Mr. Potter:

Q. You are the same Mrs. Woodruff who was on the stand yesterday?

A. Yes, sir.

Q. Mrs. Woodruff, this may be repetition, I am not positive, Mrs. Woodruff, in 1920 when you let your husband have the first money that is shown by exhibits introduced yesterday, will you tell the Court just the agreement you

352 had with him, just the conversation?

By Mr. Turnbull: I make no objection to the conversation, if the Court please.

By Mr. Potter:

Q. Will you fix the time?

A. 1920 my husband and I had a conversation wherein I agreed to let him handle all of my money that was coming in to buy bonds and good gilt edge securities, and he was not

to speculate with any of my money and he so handled it in trust for me up to the time he went into bankruptcy.

By Mr. Turnbull: I move to strike the answer, the part that says in trust for her, it is an attempt to prove an oral agreement in reference to proxy over $200.00 and not to be handled within a year. The part that he so handled it for me is invading the province of the Court and if allowed to stay in the record would impose upon the objectors and creditors an undue burden and "he so handled it in trust," that is the part I move to strike, that is a conclusion of the witness, as to the conversation, that is all right.

By Mr. Fielder: I can't see any objection to it, it being husband and wife, in regard to a trust relationship between husband and wife and she necessarily does or did trust him.

353 By Mr. Turnbull: If the Court please, your Honor may conclude this was a trust relationship, but as to her conclusion is what I am objecting to.

By the Court: The motion to strike that portion of the answer is sustained.

By Mr. Potter:

Q. What did Mr. Woodruff tell you in this conversation?

A. He told me that he would take my money, if I wanted him to, and invest it for me in good securities and bonds and handle it for me.

Q. And in pursuance to that conversation you did deliver him this money, as shown by these exhibits?

A. Yes, sir.

Q. And you relied upon him doing what he agreed to do on these conversations, did you?

By Mr. Turnbull: I object to that on the ground it is leading and suggestive and calls for an answer of yes.

By Mr. Potter:

Q. Mrs. Woodruff, did you rely on what he said?

A. Yes, sir.

Q. On Mr. Woodruff doing as he agreed to do in this conversation?

A. Yes, sir.

Q. You turned the money over to him relying on him to do that?

A. Yes, sir, I did.

Q. Did you continue to do that over a period of years, Mrs. Woodruff?

A. Yes, sir.

354 Q. Did you ever receive anything back from Mr. Woodruff, in other words, did Mr. Woodruff ever pay you anything back?

A. Yes, he did pay me back a little in 1934.

Q. What did he pay you in 1934, Mrs. Woodruff?

A. He had a piece of property on Hollywood Boulevard that had $46,000.00 taxes on it, due on it, and he said he was going to lose the property and he said you take it up what he owed me, in other words I could take it on what he owed me, he thought it would be a good thing to do and I told him I would take the property and I did, and I paid the taxes on it and credited him with $95,000.00 on the indebtedness to me.

Q. What kind of property was that at the time Mr. Woodruff delivered it to you?

A. A parking lot, it did not have a building on it.

By Mr. Turnbull: The credit is set up in the statement I presume.

By Mr. Potter: Yes, sir, it is.

Q. Mrs. Woodruff, did you subsequent to 1934, did Mr. Woodruff subsequent to 1934 pay you anything?

A. In 1935 he paid me $2,000.00.

Q. How was that payment made Mrs. Woodruff?

A. He sent it to me from Oregon, I received a cashier's check from the bank.

Q. Did he pay you anything subsequent to 1935?

A. He paid my taxes in 1937.

Q. Mrs. Woodruff, did I understand you to say the taxes were paid for the year 1937?

A. I think maybe some of the ten payments, I believe some of it was in 1936 or 1937 and 1938, I don't know

355 the amounts.

Q. Do you have a tax receipt that shows the amount and what was paid?

By Mr. Turnbull: Are you willing to take the tax statement instead of the witness?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: That shows it was paid December 5th, 1936.

A. Yes, sir, December 5th, 1936.

By Mr. Turnbull:

Q. That is the date of the payment?
A. Yes, sir.

By Mr. Potter:

Q. Mrs. Woodruff, I hand you Willie Mae Woodruff's Exhibit "79" and I will ask you if that is the evidence of the payment of the taxes paid by Mr. Woodruff for you?
A. Yes, sir.
Q. In what amount?
A. $395.76.

By Mr. Turnbull: My request went as to the date, the date is what I wanted to agree on.

By Mr. Potter: That is correct.

Q. I hand you a tax bill marked Willie Mae Woodruff's Exhibit No. "80", were those taxes also paid by Mr. Woodruff and on what date?
A. On December 5th, 1936, and in the amount of $524.99.
Q. Those are the only credits Mr. Woodruff has on this account?
A. Yes, sir.

Q. Mrs. Woodruff, was there any payment made by Mr. Woodruff to you or for your benefit in 1938?

A. When he borrowed the $25,000.00 on the Ore-
356 gon ranch, he was supposed to make a payment to me.

Q. But did he do that?
A. I don't know.
Q. Did he ever make any payment to you?
A. I don't know.

By Mr. Potter: If the Court please, we offer in evidence Willie Mae Woodruff's Exhibits "79" and "80".

By the Court: All right.

By Mr. Potter: That is all at this time.

Cross Examination.

By Mr. Turnbull; If the Court please, I want the record to show my right to proceed and at this time I offer by reference the instrument filed in this Court March 4th, 1940, on behalf of M. E. Heiser and it bears the file mark of your Honor filed March 4, 1940.

By the Court: All right.

By Mr. Turnbull: That is the so-called family claims.

By Mr. Fischl:- If the Court please, may I inquire of counsel the reason therefor, if he is laying a predicate for attorney's fees.

By Mr. Turnbull: No, to show our right to proceed, no application for allowance of attorney's fee has been filed. also offer by reference the order of this Court of August 30th, 1940, signed by G. E. Clark, entitled order in this Court and cause and call your attention to paragraph
357 two thereof, "That the application of the creditor Heiser to file objection to so-called family claim is hereby granted and ask that be in our offer also.

By the Court: All right.

By Mr. Turnbull:

Q. Mrs. Woodruff, I notice in the various exhibits in evidence there are various places which these various letters to you from the First Security Company of Los Angeles and Drake, Riley & Thomas, brokers, and the bank and others address you at 262 South Mariposa Avenue, Los Angeles, California, is that the first house you occupied when you went to Los Angeles?

A. No, not the first one?

Q. What was the address?

A. I do not remember the number just now.

Q. And then you moved to 262 South Mariposa Avenue?

A. Yes, sir.

Q. And then you moved to the Iveness Avenue property?

A. I traded the Mariposa Avenue property.
Q. To try to clean the fen up?
A. Yes, sir.
Q. When did you move to the Mariposa house?
A. In 1920 I think.
Q. You know how long you lived in the Mariposa house?
A. Something over a year.
Q. Then you moved to 262 S. Mariposa Avenue?
A. We came back to Oklahoma and then went back out there.
Q. How long did you stay in Oklahoma?
358 A. About three months.
Q. Then you moved to 262 South Mariposa Avenue?
A. Yes, sir.
Q. How long did you live there, ten years?
A. I would not say, until 1924 or 1925.
Q. Then you moved into the Iverness house in Los Angeles?
A. Yes, sir.
Q. How long did you live there?
A. When in California we lived there.
Q. I noticed your bank account during this period from 1920 you had a bank account in the First National Bank?
A. Yes, sir.
Q. You had that starting about 1920?
A. I believe so.
Q. Did you have any other bank account in Los Angeles from 1920 to 1930 other than the First National Bank?
A. I don't believe I did. Yes, I had a bank account there, it was a different bank, the California Bank.
Q. In Los Angeles?
A. Yes, sir.
Q. You told us yesterday when this money that came from the Carter Oil Company, as shown on Exhibit "2" amounting to $760,750.68, you said as those monies came in from 1920 to 1930 that they were deposited in your bank account?
A. That is correct.
Q. When you say your bank account you mean the First National Bank of Los Angeles?

A. And in Ardmore, Oklahoma.
Q. Did you have a bank account here?
A. Yes, sir.
Q. What bank?
359 A. The First National Bank.
Q. When did you cease to have a bank account there?
A. I had one more or less all the time.
Q. You don't know then that you ever ceased?
A. No, sir.
Q. I notice all the checks in evidence here that you said you paid to Drake, Riley & Thomas or Mr. Woodruff and these other brokerage houses, they were all drawn by check on the First National Bank of Los Angeles, did you ever draw any checks on any other bank that is the basis of this claim of the money you gave to Mr. Woodruff, I believe all of these checks are on the First National Bank of Los Angeles?
A. That is all we could find.
Q. I take it from what I have learned from the checks generally from 1920 to 1930 you were housewife raising your children at that time were you?
A. Yes.
Q. During this time from 1920 to 1930 when you received this $760,000.00 plus, you were a housewife raising your children?
A. Yes, sir.
Q. Did you keep any books yourself?
A. No, sir, Mr. Woodruff kept what books were kept.
Q. Whatever books were kept he kept them, is that it?
A. Yes, sir.
Q. And you don't have those, such as he kept?
A. What is left after they got through figuring up the income taxes in 1933, I have what books were left.
Q. You did not keep any books yourself?
360 A. No, sir, I did not.
Q. You did not keep any books between yourself and Mr. Woodruff only those checks and memorandums such as you have here?
A. That is correct.
Q. How often would you get your return checks after they

were issued and returned to you, how often would you pick up your checks that are now in evidence commencing in 1920?

A. I don't remember.

Q. What is your best judgment on it, we have them here now, you know you must have picked them up some time.

A. I did not handle that matter personally. I did not hardly ever pick them up, Mr. Woodruff would get them part of the time.

Q. Do you know how often they were picked up?

A. No, I don't know.

Q. Every thirty to sixty days?

A. I don't know.

Q. Or once a year?

A. I really would not know. I could not answer the question.

Q. They are in evidence, a great many exhibits are in a form such as Exhibits "79" and "79-B" which I show you, which are debit slips, did you know how much was being checked out of your account. You were charged in Exhibit "78" with $26,500.00, those debit slips came back with your checks?

A. I can't remember exactly as to that. I remember getting Mr. Woodruff's checks, I don't remember these things.

361 Q. Did you know on February 26th, 1925, $15,000.00 was taken out of your bank account, that is one of the exhibits in this case, which is Exhibit "78-B"?

A. I knew he cashed the checks I gave him and knew those were taken out of my account, I did not know every time about this.

Q. Here is also Exhibit No. "78", a deposit slip against your account, I mean a debit slip against your account for $26,500.00 on March 5th, 1923, you can see right here that on or about that time your account was charged with that amount of money and you can see that that amount of money had been taken out of your bank account.

A. I suppose I knew it, as far as I remember I do not remember these debit slips.

Q. I show you Exhibit No. "30", which is a letter addressed to you reading in part as follows: "Complying with

Mr. Woodruff's instructions we are today charging your account with the First National Bank of Los Angeles $14,406.24 being in payment for 15,000 par value New York Central Railroad Refunding and Improvement Mortgage five per cent bonds due two thousand and thirteen at ninety-four and a half and accrued interest", you got that letter, I presume?

A. I did not open it, he was taking care of it for me at that time.

Q. You had drawn a check for $14,406.24 for this New York Central Railroad Refunding and Improvement Mortgage, you had discussed with him concerning the pudchase of that mortgage had you not?

A. Only that he was to buy good stock, I did not know what he bought.

Q. Did you ever know what he bought?

362 A. I knew he was buying is all I knew.

Q. From 1920 to 1930 when these hundreds of thousands of dollars of yours was turned over to your husband, Leonard Woodruff, as evidenced by these various checks, you did not know what he bought?

A. No, I trusted him to use his own judgment.

Q. You did not know if they were Liberty Bonds or Railroad Bonds or Stocks or what they were?

A. I told him to buy good stocks and not speculate with my money was all.

Q. Did you ever find out from 1920 to 1930 that he had bought $40,000.00 of the Fourth Liberty Loan Bonds, did you know he had bought those bonds?

A. I knew he bought some Liberty Loan Bonds, yes, sir.

Q. But this New York Central Railroad Refunding and Improvement Mortgage five percent bonds, did you know that he purchased those?

A. He told me after he would buy but I do not remember and I do not know just what it was. I do not know anything about stocks and bonds.

Q. At the time he would tell you about it, but you do not remember now?

A. Yes, he told me he purchased them, I don't remember what they were.

Q. At this time for the purpose of examining the witness concerning the documents—

By Mr. Turnbull: If the Court please, at this time for the purpose of examining the witness concerning the documents, I offer in evidence a stipulation as to certain evidence to be adduced herein signed by the respective
363 counsel and these copies may be used if counsel desires, and this stipulation is offered as our Exhibit "X" at this time. I want to offer this stipulation and the exhibits "1" to "16" as part of the record.

By Mr. Fieler: I object to the introduction for the reason it does not connect in any way to the claim of this person, the claim of this claimant I mean, it doesn't connect in any way with the claimant's claim. All these other people did have accounts with the Company, as indicated here, but that would not be binding upon this witness or this claimant's claim.

By Mr. Turnbull: I can't understand the attitude of counsel after he entered into this stipulation. He entered into this stipulation and it shows the pages, one to sixteen, that is what I am seeking to introduce.

By Mr. Fieler: If the Court please, we object to it, it is not binding upon this claimant.

By Mr. Casey: The stipulation is not as to the account of Mrs. Woodruff, there is nothing in this except as to the other accounts.

By Mr. Turnbull: It is a stipulation that these are the books of Drake, Riley & Thomas and you ought to be ashamed of yourself to enter into such a stipulation and then repudiate it.

364 By Mr. Fieler: If the Court please, I object to any such implication.

By Mr. Turnbull: It is not an implication it is a direct charge. The stipulation recites that the books of the brokers are Drake, Riley & Thomas, and Mr. Riley was sworn and testified the books were kept in the ordinary course of business, and these are true copies of the originals and may be used for any purpose, the originals may be used for, and in this case Mr. Riley was testifying or did testify the books were regularly kept and pages one to sixteen are the sheets

from that book and may be used for any purpose that the originals might be used for, and I want to show Mr. Woodruff kept a trading account and would buy certain bonds and bought the very bonds we have evidence here that he bought and those bonds were transferred from one account to another account on the books and I also want to show those bonds were sold and the money realized therefrom in 1924.

By Mr. Feiler: In answer to that, if the Court please, I don't dispute that these exhibits or these sheets here can be introduced when Mr. Woodruff is on the stand, insofar as these items apply to other persons' matters in this
365 stipulation, but I don't see how he could connect this claimant with it. How was she bound by that investment made by other persons or any investment made by other persons. If he claims any such stuff as he has stated as to these funds or these accounts, then he can have Mr. Woodruff on the stand to clarify that, but I don't see how it could be binding upon this woman.

By the Court: I see here one sheet shows the account of Mrs. Woodruff.

By Mr. Fieler: Insofar as that goes, yes, sir, but there is nothing to go with it. The stipulation shows that one sheet should go in maybe, I agree to it, insofar as it shows her account.

By Mr. Turnbull: Your objection then that the balance of the exhibits, "1" to "16" are not material in this case?

By Mr. Fieler: They are not applicable to this case.

By Mr. Turnbull: I only have one stipulation as to the entire exhibit.

By the Court: That last sheet would be admissible but the others would not at this time.

By Mr. Turnbull: I must establish that as the books of the Company. I am offering the stipulation which contains the testimony of the two witnesses that they are the books of the Company and may be used in evidence.

366 By Mr. Fieler: As to the last sheet, it may be used, if the Court please.

By Mr. Turnbull: I offer all of them at this time.

By Mr. Fieler: I object to all of them except the last sheet.

By the Court: Objection is sustained.

By Mr. Fieler: I will stipulate this last sheet of this exhibit, regardless of that stipulation, may be introduced in evidence showing the account of Mrs. Woodruff with the Coinpany as therein stated.

By Mr. Turnbull: I still believe this written stipulation is good. At this time I offer to prove by the written stipulation of counsel marked Heiser's Exhibit "1" by stipulation re evidence over the signature of counsel for Willie Mae Woodruff the facts therein stipulated except the stipulation that Exhibits "1" to "16" are true photostat copies of the books and records of Drake, Riley & Thomas and as recited in the stipulation, "May be used with the same force and effect as if the original books were produced", and offer to prove as therein recited, "That it is stipulated that it shall be deemed that Mr. Riley has been sworn and testified and he was one of the members of the firm of Drake, Riley & Thomas, who were stock brokers of Los Angeles, California, that said firm is not now actually operating and dur-
367 ing the time said firm was operating they kept regular books and accounts with their clients; and in said books and accounts which were regularly kept in the ordinary course of business, there appeared the account of Leonard Woodruff, Herman Woodruff, Leonard Woodruff, Jr., and Willie Mae Woodruff. That said books were produced by the witness at the instance or request of Mr. Turnbull, one of counsel for Mr. Heiser, and the witness permitted the photostats of said sheets to be made by Claud Short. It is further stipulated as in said stipulation, "And the witness identified for Claud Short the sheets marked "1" to "16" both inclusive as true and correct copies of the original books of Drake, Riley & Thomas." If the Court please, further down it was stipulated by counsel in this case that Claud Short shall be deemed to have been sworn

and testified he was a resident of Los Angeles, California, and he went to the office and obtained the books of Drake, Riley & Thomas and made sixteen sheets, each of which are attached to this exhibit and marked "1" to "16", and that said sixteen sheets are true and correct photostat copies made from the books of Drake, Riley & Thomas. I offer to make that proof. I make that as an offer of proof.

368 By Mr. Fieler: If the Court please, I object to the offer of proof but do offer to stipulate that so far as sheets "1" to "15" attached to the exhibit he refers to are not applicable to the claimant's claim here, Mrs. Willie Mae Woodruff, with the expection that the stipulation of counsel is that the account appearing on Page 16 in the name of Willie Mae Woodruff is a true account of the books and records of Drake, Riley & Thomas, but has no application other than to show that the account, therein stated is just as stated on the books of the Company and may be offered in place of the original. As to the other part of the exhibit, I object as not being applicable in this case. We have no objection to counsel using it insofar as it is applicable to other matters, and as to the bankrupt, but not as to the claimant here.

By Mr. Turnbull: I take it counsel is resisting my offer. I made an avow, an offer of proof. Then I offer in evidence, if I understand your Honor truly on the objection I made an offer of proof and counsel resists it.

By Mr. Fieler: Yes, except as to sheet No. "16".

369 By Mr. Turnbull: Do you sustain the objection as to the offer to overrule the objection?

By the Court: I sustain his objection to the offer.

By Mr. Turnbull: At this time I now offer in evidence stipulation in re evidence marked Heiser's Exhibit "1" and with it Exhibit No. "16" being the account of Mrs. Willie Mae Woodruff.

By Mr. Fieler: If the Court please, I object to the stipulation as not binding upon the claimant here and consent to the admission of sheet No. "16", as it does apply to claimant's account.

By the Court: I can't see where the other accounts would be admissible.

By Mr. Turnbull: I offer the stipulation and sheet No. "16", if the Court please.

By Mr. Fieler: The written stipulation does not apply to sheet No. "16".

By the Court: The original covers it, but does not cover the account of Willie Mae Woodruff?

By Mr. Turnbull: It shows sixteen sheets attached thereto are true and correct copies.

By the Court: The objection is overruled.

By Mr. Turnbull: We will keep the same exhibit number and only admit it as to the stipulation and sheet No. "16".

Q. Mrs. Woodruff, there has been introduced in evidence the sheet which I show you which is sheet No. "16" and is a copy of the books and account of Drake, Riley & Thomas commencing in 1921, and ending some time in 1924. I believe I will ask you did you know there was an account with Drake, Riley & Thomas in your name in 1924?

370

A. I knew Mr. Woodruff was buying bonds and stocks from them.

Q. And you knew you were making the actual checks in favor of Drake, Riley & Thomas?

A. Sometimes they were filled out to them and sometimes they were in blank.

Q. And when they came back they were filled out in favor of Drake, Riley & Thomas, is that true?

A. I do not remember as to whether I knew that or not.

Q. Did you know in 1921 there was an account in your name with Drake, Riley & Thomas?

A. I did not.

Q. Did you know it in 1922?

A. I don't remember knowing it at all. Mr. Woodruff handled my business and I did not know anything about any account.

Q. Did you know it in 1923?

A. I knew he was buying bonds and stocks is all I knew.

Q. You knew there was an account in your name with Drake, Riley & Thomas in 1924?

A. I don't remember ever knowing it, no, sir.

Q. You knew it or did you know it at any time during 1921 to 1924?

A. No, sir, the only thing I can answer I knew that Mr. Woodruff was buying bonds and stocks and this company was in business and I probably knew he was dealing with them to some extent, but I never knew anything about any account in my name at any place.

371 Q. You knew they were keeping an account in your name then did you?

A. No, sir, I did not know that at any time.

Q. That is true in 1929, '21 to 1924, as far as you know, is that right?

A. Yes, sir.

Q. Did you know anything concerning the actual checks which you had given which are now in evidence here to Drake, Riley & Thomas, anything concerning that money other than the fact it was being used to buy stocks and bonds for you?

A. No, I did not know anything about it only it went to buy stocks and bonds.

Q. That is all you knew about it?

A. Yes, sir, that is all.

Q. Did you know who Drake, Riley & Thomas were?

A. I knew they were selling bonds and stocks.

Q. You knew they were a stock brokerage house?

A. Well, I don't know that that is necessary to know.

Q. Did you know in 1921 Mr. Woodruff was buying and dealing with Drake, Riley & Thomas for his account?

A. Well, I knew he bought some stocks and securities, yes.

Q. Bought what?

A. Bonds and stocks.

Q. Did you know that in 1921 whether or not there were accounts in the books of Drake, Riley & Thomas' office in the name of your daughter Margaret?

A. Well, he told me he was buying bonds and stocks for the children.

Q. Your children and his children?

372 A. Yes, sir.

Q. Howard and Margaret and Leonard Jr., were the three children?

A. Yes, sir.

Q. Which is the oldest?

A. Howard.

Q. When was his birthday or when was he born?

A. He was born the 19th of March, 1916.

Q. And Margaret was born when?

A. The 14th of March, 1918.

Q. And Leonard, Jr.?

A. He was born the 28th of February, 1921.

Q. When he said he was buying stocks for the children you understood him to mean all three children, did you, Leonard, Margaret and Howard?

A. Perhaps he bought some before Junior was born, I don't know, and those would be for Margaret and Howard.

Q. Exhibit "22" shows a transfer of $5,000.00 from your account to the account and credit of Herman Woodruff, you said that money was sent by you to Herman Woodruff at, for and at the request of Leonard Woodruff?

A. Yes, sir.

Q. Was that your money you sent to Herman Woodruff?

A. Yes, sir.

Q. Did you get a promissory note from Herman Woodruff for it?

A. No, sir.

Q. Did you get the promise your husband would give you bonds for it?

A. Yes, sir.

373 Q. Did he give you a bond or any kind of stock at the time you sent the money to Herman Woodruff?

A. No, sir.

Q. Did he give you any bond thereafter?

A. No, sir.

Q. Some of these checks which are in evidence here in support of your claim are to Slaughter, Anderson & Fox, or Anderson & Fox, did you know at the time the checks were made as to the business of Slaughter, Anderson & Fox?

A. They sold bonds and stocks.

Q. At Los Angeles, California?

A. As far as I know, yes, sir.

Q. At the time you gave the checks, you gave them to purchase bonds for yourself?

A. Yes, sir.

Q. You got none of the bonds at all?

A. No, sir.

Q. And none of the stock at any time, is that right?

A. Yes, sir, that is right.

Q. At the time you went to California in 1920, you were the wife of Leonard Woodruff and have been ever since?

A. Yes, sir.

Q. I show you one portion of Exhibit "60" and Exhibit "60" is five of your checks and one portion of which is a check dated December 3rd, 1926, a check for $600.00 in favor of Jack Thomas. You testified yesterday, as I remember it, that all of these five checks were given to Mr. Woodruff and he promised to give you bonds for the money, don't you know Jack Thomas was an employee of Mr. Woodruff on his Oregon ranch and that check went to pay part of the labor bill up there, a debt due Mr. Thomas?

374 A. Yes, and Mr. Woodruff told me he would give me the money back or bonds for it.

Q. Did he tell you that Jack Thomas had a bill for labor at the ranch?

A. He never asked me for any money except when he promised to return bonds and good securities to me for it.

Q. He told you on these occasions he would give you bonds for the money?

A. Yes, sir, and good securities.

Q. And on each occasion he told you that he did not keep his promise, is that right?

A. He did not give me the bonds, he always had the money to pay me back and always told me I need not worry about it, that is what he told me when I would ask him about it.

Q. Did you know who Jack Thomas was in 1926 at the time you gave this check?

A. Yes, sir.

Q. And you knew you were writing this check to pay for labor on the ranch?

A. Yes, sir.

Q. And Mr. Woodruff told you he owed Jack Thomas for labor and wanted the money to pay him?

A. Yes, that he owed him the money, of course, he would not have paid him if he had not owed him.

Q. You knew, did you not, when you gave Mr. Woodruff the $40,000.00 check which is in evidence here that he actually bought United States Liberty Bonds of the Fourth Series for that $40,000.00 did you?

A. He told me he bought some Liberty Bonds.

375 Q. This $40,000.00 check, this particular $40,000.00 worth of Liberty Bonds that you testified yesterday and identified the money that went into the bonds, I show you Exhibit No. "61", which is a debit slip of $40,136.55, now do you know that money was to buy Liberty Bonds, did you, $40,000.00 worth of Liberty Bonds?

A. He did not specifically tell me that he was going to buy Liberty Loan Bonds with that money.

Q. That is a debit slip from your bank for $40,136.55?

A. Yes, sir.

Q. The bank sent you that debit slip?

A. I got it from Mr. Woodruff's account the first time I ever saw it.

Q. When was the first time you knew the Liberty Loan Bonds were purchased by that money?

A. Well, I can't remember, I could not tell you that.

Q. Did you know in 1922 that he used that $40,000.00 to purchase $40,000.00 worth of Liberty Loan Bonds of the United States?

A. No, sir, I did not know it.

Q. You did not know it?

A. No, sir.

Q. Did you ever ask him to deliver to you the Liberty Bonds?

A. No, sir.

Q. Or any Liberty Loan Bonds?

A. No, sir, I never did.

Q. You know now, don't you, from these exhibits "61", "61-A" and "61-B", he did buy $40,000.00 worth of United States of America Fourth Liberty Loan Bonds of 1938, due in 1938 at $99.94 with that money of yours?

376 A. Yes, sir, I know that shows it, yes, sir.

Q. Do you know what became of the $40,000.00 Liberty Loan Bonds?

A. No, I do not know.

Q. Did you ever see them?

A. No, I don't remember ever seeing them.

Q. Did you ever give any instructions for their sale?

A. No, I did not.

Q. You have produced here and have had marked as your exhibits "62" and "62-A" first a check in favor of Drake, Riley & Thomas in the sum of $8,984.64, and Exhibit "62-A" to which the check is attached is a sales slip on Drake, Riley & Thomas' letterhead showing sold to Willie Mae Woodruff $15,000.00 Pacific Gas & Electric Corporation bonds, the interest is 5½ percent and the price was ninety-eight, that is $14,700.00 and interest accrued four months and eleven days $300.30, making a total of $15,000.30, did you ever see those Pacific bonds?

A. No, sir.

Q. Did you ever give any direction for their sale?

A. No, sir.

Q. Or the money, did you ever get the money for them?

A. No, sir, I never did.

Q. Did you know at or about the time you gave the check marked Exhibit "62" to Drake, Riley & Thomas, that money would be used to purchase Pacific Gas & Electric Corporation bonds?

A. No, sir.

Q. When did you find out that money was used to purchase those bonds?

377 A. I signed the check to Mr. Woodruff, and Mr. Woodruff filled it out, I did not know what kind of bonds he intended to buy.

Q. You did not know what kind of bonds he intended to buy but you had given him that check in blank, the figures therein stated and the name Drake, Riley & Thomas, are, as you say in his handwriting?

A. Yes, sir, that is right.

Q. The only handwriting on that check for $8,984.64 is your signature thereto, is that right?

A. Yes, sir.

Q. You gave it to him in blank?

A. Yes, sir.

Q. And he filled out the amount and the payee?

A. Yes, sir.

Q. When the check came back you discovered it had been made out for $8,984.64 in favor of Drake, Riley & Thomas?

A. I never saw the cancelled check. I saw them, looked at them, and I know I never saw this one.

Q. Did he take care of all of your banking business?

A. Yes, sir.

Q. And like a good wife he asked you to sign a check in blank and you signed it?

A. Yes, sir.

Q. You said you quite frequently signed a check in blank?

A. Only when he was going to invest it for me.

Q. Except in cases like this you never did?

A. He told me he would give me bonds in return for the money.

Q. And you did find out afterwards he did buy $15,000.00 of Pacific Gas & Electric Corporation bonds for this check for $8,984.64, which was made payable to Drake,
378 Riley & Thomas, did you not, you found that out?

A. When getting these accounts all straightened up or trying to, I did, yes, sir.

Q. Did you ever see the books?

A. No, sir, I never did.

Q. Did you ever direct that those bonds be sold to repay you your money?

A. No, sir, I never did.

Q. Were they ever sold?

A. I would not know.

Q. Did you ever see the books of Drake, Riley & Thomas concerning your account?

A. I never did.

Q. You never have?

A. No, sir.

Q. Mr. Woodruff then had disposed of the securities, the stocks and bonds after they were purchased and before you found out what he had been buying?

A. Yes, sir.

Q. With respect to these securities which were registered in your name did you ever authorize them to be taken out of your name?

A. No, sir, I never did.

Q. You know how he accomplished the sale of the registered bonds?

A. No, I never refused to sign anything he asked me to sign, I don't know whether I signed them or whether he did, and I do not know what I did sign.

Q. If they were signed by you then he came around and asked you to sign papers and you signed them?

379 A. Yes, sir.

Q. Was that true from 1920 to 1930?

A. Yes, sir.

Q. Is that the reason why so many of these exhibits from "1" to "78" are in many instances filled out in his hand writing except your signature?

A. Yes, sir.

Q. Is that the same reason you don't know about a great many of these transactions as to the deals you signed your name where he asked you to and when he asked you to?

A. That is correct.

Q. During any of the time after the first time you spoke to him in 1920 about investing your money in bonds or gilt edge stocks, did you tell him of any securities he had purchased in your name were speculation and not gilt edge securities?

A. No, I did not.

Q. Exhibit No. "32" is a check for $14,000.00, dated October 30th, 1923, you identify that as your signature, do you?

A. Yes, sir.

Q. And you say that was used to pay for one of the ranches in Oregon taken in the name of Mr. Woodruff?

A. Yes, sir.

Q. The ranch was not taken in your name or jointly with him at all then?

A. No, sir.

Q. It is in his name?

A. Yes, sir.

Q. That is one of the pieces of property in his name?

A. Yes, sir.

380 Q. It is listed as the Oregon ranch?

A. Yes, sir.

Q. There was about five or six purchases in Oregon before you got this ranch together?

A. Several different pieces of land.
Q. And they comprise now the complete ranch?
A. They are still separated I think.
Q. Are they widely separated or in the same County?
A. I don't know as to that.
Q. You have not been there?
A. They are not very far apart.
Q. This Exhibit "32" is a check of October 30th, 1923, and it shows it was paid and shows paid November 2nd, 1923, if you will notice, you said that $14,000.00, Exhibit "32" went to pay for one of the ranches and at the time you gave the draft to Mr. Woodruff, at his request, he promised thereafter to give you bonds for the money?
A. Yes, sir.
Q. What did he say as to the bonds he would give you for the $14,000.00, what kind of bonds?
A. He did not tell me.
Q. That was at the time you made the draft in 1923, at the time of this conversation, and this promise, was that at the time of the conversation, at the time of the writing of the draft, is that when he told you he would give you bonds for this amount?
A. Yes, sir, at the time I gave him the draft.
Q. You know whether or not thereafter he bought bonds in your name or otherwise for that $14,000.00?
A. No, I don't know.
381 Q. You never got any bonds for that money?
A. No, sir, I never.
Q. For that reason you still contend he owed you that $14,000.00 is that it?
A. Yes, sir, he does.
Q. You have not been repaid this $14,000.00?
A. No, sir, I have not.
Q. With respect to Exhibits "33" and "34", they too are drafts, and Exhibit No. "33", is a draft for $7500.00 and Exhibit No. "34" is for $1500.00 to the First National Bank of Lakeview, Oregon, that $7500.00 and the $1500.00 and the $14,000.00, they were all used to buy the ranch with?
A. Yes, sir.
Q. Did your husband ask you for $9,000.00 to buy cattle with?

A. He asked me if he could use it and give me bonds in place of it.

Q. You had this money in the First National Bank of Los Angeles?

A. Yes, sir.

Q. And you said he was going to buy cattle to stock the Oregon ranch with?

A. Yes, sir.

Q. Did he tell you how many cattle he wanted to buy?

A. Yes, sir.

Q. Did he say all of this $9,000.00 was to be used for that purpose?

A. Yes, sir.

Q. You drew these two checks here or these two drafts for that amount of money?

382 A. Yes, sir.

Q. It was the time these drafts were drawn and the date they bear, October 29th, 1923, you had the conversation with him about giving you bonds in lieu thereof?

A. At the time he got the money.

Q. When do you consider he got the money, the day the drafts were drawn, they are both paid, they were drawn on October 29th and they are marked paid on November 5th. The drafts were both paid, now did you have the conversation at the time you signed the drafts and gave them to him, is that what you mean?

A. I had the conversation when he got the drafts, before I gave him the drafts.

Q. And he told you what he wanted with the money?

A. Yes, sir.

Q. With respect to the drafts, was it the day you gave him the drafts or the day before you had this conversation with him?

A. Probably the day before I had the conversation.

Q. That would be on October 28th then?

A. Perhaps it was.

Q. What is your best judgment as to that?

A. It might have been the same day, I would not say.

Q. The same day or the day before?

A. Yes, sir.

Q. And he said he wanted $9,000.00?

A. To buy cattle.

Q. He said he wanted $9,000.00 to buy cattle?
A. Yes, sir.
Q. And you gave him these two drafts?
383 A. Yes, sir.
Q. What else did he say about the repayments?
A. He said, "I will use your money to buy cattle with and in return I will give you bonds when I get back to Los Angeles".
Q. At that time you were at Lakeview, Oregon?
A. Yes, sir.
Q. Were you living on the ranch at the time?
A. Lakeview is not the ranch, the ranch was at Ft. Clenet, he bought the cattle over there.
Q. The Oregon ranch is how far from Lakeview?
A. Fifty or sixty miles.
Q. And he said, "When I get back to Los Angeles, I will give you bonds for this money"?
A. Yes, sir.
Q. How soon after these drafts were written did you go back to Los Angeles?
A. In September, I think.
Q. This was in October when you gave the drafts, did you go back to Los Angeles that year?
A. Did not stay there very long, it was too cold.
Q. You think you went back before Thanksgiving?
A. We might have come to Oklahoma.
Q. When did you get back to Los Angeles.
A. I don't remember.
Q. You did not go back right then?
A. No, I don't remember, we could have.
Q. When you got back to Los Angeles did he give you any bonds for this money?
A. No, sir.
Q. He never did give you any bonds for these ex-
384 hibits "33" to "39", did you ever get any bonds for those?
A. No sir.
Q. Or did you receive any repayment for this money?
A. No, sir.
Q. Did you ever ask him for bonds when you got back to Los Angeles?

A. He said he would have them for me, I presume he put them in my name and I assumed he had then.

Q. Since that time have you ever asked him for them?

A. Well, no, he said he would get them for me.

Q. Since you married to Mr. Woodruff you have not engaged in any business of your own other than leasing this land for oil?

A. No, sir.

Q. You have not engaged in any trade or commerce?

A. Until I got the property in 1934.

Q. The Iverness Street property?

A. Yes, sir.

Q. That is the corner on the South side of Hollywood Boulevard?

A. Yes, sir, that is it.

Q. And the Iverness Street property is a residence?

A. Yes, sir.

Q. No business conducted there?

A. No, sir.

Q. Never has been any business conducted in connection with the Iverness Street property?

A. No, sir.

Q. And the Iverness Street property has a drug store on the corner?

A. Yes, sir.

385 Q. Up to 1924 you had no business did you?

A. No, I did not.

Q. You had no business experience?

A. No, sir, I had not.

Q. You were not in any kind of business up to 1934 up to the time you bought the Hollywood Boulevard Street property?

A. No, sir.

Q. And it has a drug store on the corner there now?

A. Yes, sir.

Q. There was introduced here yesterday testimony concerning the purchase of bonds of the French Republic, did you ever discuss with Mr. Woodruff the purchase of those bonds?

A. No, sir.

Q. Did you know he bought them?

A. No, sir.

Q. Do you know if they were ever in your name?

A. He might have told me they were, I don't know.

Q. You know he did actually buy them?

A. I don't remember, you may have the check there to show it but I do not remember anything about it.

Q. You know how many bonds of the French Republic he bought independent of the records?

A. No, I don't know anything about it.

Q. Mrs. Woodruff, I want to be sure about one thing, all of the money that you deposited in the First National Bank of Los Angeles and the money you deposited in the First National Bank of Ardmore, that was the money that you got from the Carter Oil Company?

A. Yes, sir.

Q. Was that the only source from which you got
386 any money at all?

A. Yes, sir.

Q. Mrs. Woodruff, Exhibit No. "2" shows at the bottom of it $760,750.68, you think all of that money came to you?

A. Yes, sir.

Q. That is the money you put in the two bank accounts?

A. Yes, sir.

Q. Now counsel asked you this morning when you first started lending Mr. Woodruff money, when you first started letting him have money for investment purposes he told you it would be put in bonds and gilt edge securities and you told him you were not speculating with your money, is that right?

A. Yes, sir.

Q. Then when did you put up the first money?

A. Right then.

Q. That is when you put up the first money then?

A. Yes, sir.

Q. Where was that conversation?

A. When we lived in the Figueroa house.

Q. In Los Angeles?

A. Yes, sir.

Q. And you had similar conversations at each time you put up money and at the time you put up the $40,000.00 and

at the time he wanted to buy the Liberty Loan Bonds he continued to tell you the same thing?

A. What is that?

Q. In May of 1922, May 18th, $40,136.55 was checked out of your bank account as shown by Exhibit "61" and "61-A" and "61-B", which I show you, those exhibits show
387 the bonds were bought from the First Security Company and it has been stipulated they were controlled and owned by the First National Bank of Los Angeles, at the time you gave this check, did you have the same conversation with your husband, Leonard Wooward, in other words, did he agree that he would use that money to buy these particular bonds?

A. He said he was going to buy bonds and wanted me to sign a check.

Q. And that happened on or about the time you gave him the money in 1922, about the same time?

A. Yes, sir.

Q. You had the conversation at the time you gave him the money?

A. I had the conversation beginning about 1920.

Q. I know about that.

A. I never changed it after that in any way.

Q. If you had any conversation with him concerning the matter after that it was always approximately the same thing?

A. Yes, sir.

Q. You think you had the same general conversation with him at the time you put up the $40,136.55?

A. I did not have any at that time that I remember other than he said he was going to buy bonds and asked me to sign a check.

Q. That was on the date shown here in May of 1922?

A. Yes, sir, the date he bought the bonds, about that time.

Q. That occurred at Los Angeles, did it?

A. Yes, sir.

Q. Exhibit No. "63" is a check drawn on the First
388 National Bank of Los Angeles for $64,000.00 dated March 14th, 1922. I know in answer to a question

yesterday you said you gave Leonard Woodruff that you actually handed it to him?

A. Yes, sir.

Q. You said that check was also given according to his statement to buy bonds for you?

A. Yes, sir.

Q. And you had that conversation when?

A. At about that time.

Q. And where were you?

A. In Los Angeles.

Q. California.

A. Yes, sir.

Q. That is when the check was made?

A. Yes, sir.

Q. And that is where the check was written?

A. Yes, sir, he said he was going to buy a large amount of bonds, I don't know if he filled it out at the house or somewhere else.

Q. In Los Angeles?

A. That is his handwriting. I often signed checks in blank.

Q. Do you know if he bought anything with the $64,000.00?

A. He told me he was going to.

Q. Do you know if he bought anything with it?

A. No, sir.

Q. He told you he was going to use this $64,000.00 to buy bonds with and you say he probably filled this check out at the house?

A. Probably in town, yes, sir.

389 Q. In Los Angeles?

A. Yes, sir.

Q. That was in California?

A. Yes, sir.

Q. You don't know if he ever bought any bonds with this money or not, do you?

A. No, I don't know personally.

Q. Yesterday you told your own counsel when he used it for anything other than what he said he was going to use it for, you knew what it was actually used for?

A. No, I don't know as to that.

Q. It was payable to the First National Bank, do you know what the money actually went for?

A. No, sir, I do not.

Q. Have you been able to find out?

A. No, sir.

Q. You don't know whether he bought bonds with it or not?

A. No, sir, I don't know.

Q. Exhibits "67" and "68" are two checks and Exhibit "67" being a check for $18,000.00 payable to the First National Bank of Los Angeles, and "68" being a check for $9,415.66 payable to the First National Bank of Los Angeles both dated in 1924, I hand them to you. You told us yesterday the purpose for which you gave the checks, first you said you actually handed the checks to Mr. Leonard Woodruff, and the purpose for which you gave them was to buy bonds, did you have a conversation with Leonard Woodruff, your husband, at the time you made out the checks and handed them to him?

390 A. About these particular checks you mean?

Q. You said yesterday when you handed him the particular checks you said in answer to your counsel's question you said the purpose in delivering these checks to Mr. Woodruff was to buy bonds?

A. Yes, sir.

Q. Did you have a conversation with Mr. Woodruff at the time you delivered these checks in regard to buying bonds?

A. Yes, sir.

Q. Where was that conversation had, at Los Angeles?

A. Yes, sir.

Q. That is where you were when the checks were made out, is that right?

A. Yes, sir.

Q. Did you ever get any bonds for those checks?

A. No, sir.

Q. Do you know if he used the money to buy bonds with?

A. He told me he did.

Q. Did you ever see the bonds.

A. No, sir.

Q. Now I asked you early this morning about Exhibits

"67" and "68", I mean I asked you about Exhibit "78" and Exhibit "78-B" and "A", I asked you about that money. I show you the exhibits, one is a debit for $26,500.00 and one for $15,000.00, they are dated one in March, the 5th I believe it is, 1923, and one is dated February 26th, 1925, you were asked yesterday about those exhibits particularly Exhibit "78-B" which is dated February 26th, 1925, and you said that your attention was called to the fact that this recital on the instrument, "For investment according to instructions" and you said you had
391 left the instructions up to Mr. Woodruff, Leonard Woodruff?

A. That is correct.

Q. Did you have a conversation with him at the time that money was checked out of your bank account, that it was to be invested for you?

A. I don't remember of that date.

Q. You remember the conversation you had with him in substance, you said yesterday, "My understanding this money was used to purchase the French Republic 77 External Bonds, I am quite sure I am right as to that", Whatever conversation you did have you had it at the time the money was used, did you?

A. I did not always have a conversation with him at the time I gave him a check.

Q. Sometimes he just asked you for the money?

A. Yes, sir.

Q. Where were you when these two debits were checked out of your bank account?

A. I don't remember.

Q. How old were you in 1920?

A. In 1920?

Q. Yes.

A. I was 20 years old.

Q. 20 years old?

A. I think so.

By Mr. Turnbull: That is all just now.

By Mr. Potter:

Q. Mrs. Woodruff, I will ask you if Mr. Woodruff had a great number of bonds during the time from 1920 to 1930?

392 A. Yes, sir.

Q. Did he have a good number of bonds of his own?

A. Yes, sir.

Q. Let me ask you too, on the occasions when Mr. Woodruff came back to you, after you had given him money for the purpose of buying bonds, and he came back and would tell you he had bought bonds, would he tell you what they were?

A. He said they were good gilt edge securities.

Q. And would he tell you where they were?

A. He said they were in the safe deposit box.

Q. In the bank?

A. Yes, sir.

By Mr. Potter: That is all.

By Mr. Turnbull:

Q. Mrs. Woodruff, we have here Heiser's Exhibit No. "1" marked for identification which has been refused as evidence in this matter by the Court, but it has been admitted as to the stipulation and as to Exhibit "16" only.

By Mr. Potter: Just a minute Mr. Turnbull, I would like to ask another question.

By Mr. Turnbull: Go ahead.

By Mr. Potter:

Q. Mrs. Woodruff, do you know how much of the time Mr. Woodruff was outside of the State of California from 1920 to 1939, approximately?

A. He was out of the State a good deal of the time.

Q. Would you say twenty-five percent of the time?

By Mr. Turnbull: We object to that as leading.

By Mr. Potter: Withdraw it.

393 Q. Can you tell the Court approximately how much of the time he was out of the State of California?

A. I would say about half of the time, I would think.

By Mr. Potter: That is all.

By Mr. Turnbull:

Q. When did you go to California, in 1920, what part of the year?

A. In December I believe, no, it must have been in 1919, I believe it was.

Q. You were there in 1920?

A. Yes, a part of the time.

Q. You rented a house on Figueroa Street?

A. My mother and father-in-law bought a house.

Q. You lived in that house how long?

A. I am sorry to say—

Q. How long did you live in the house on Figueroa Street?

A. Well, I think Mr. Woodruff went to Oregon during that time.

Q. When did he go to Oregon, in 1920?

A. I don't remember the month or the year that he went there.

Q. How long did he stay in Oregon in 1920, how much of the time?

A. Six or eight weeks.

Q. He was here the rest of the year in 1920. I will show you Exhibit "6", it is Exhibit "7", six checks all dated in the year 1920, all issued on the First National Bank of Los Angeles, the first one of them was issued in July, does that refresh your memory as to where Mr. Woodruff was at the time, they were cashed, were they not?

A. This one is July.

394 Q. Yes, and it is July 13th and this one is the 22nd?

A. I don't know the month he was gone.

Q. These checks did not go through any outside clearing house, does that refresh your memory, Mr. Woodruff was in Los Angeles in 1920?

A. Yes, I think he was there.

Q. I show you another check, part of Exhibit "7", dated September 14th, 1920, does that—that check is not cashed outside of Los Angeles, would that refresh your memory as to where he was in September if he was in Los Angeles?

A. Yes, the check shows he was here.

Q. And on October 20th here is another check endorsed by him and cashed locally, does that refresh your memory that he was in California at that time in 1920?

A. Could he have mailed that check to Los Angeles?

Q. I am asking you if it refreshes your memory.

A. No, it don't, I don't know, I do not know what time he was gone or when he came home.

Q. I show you a check dated in November of 1920, does that refresh your memory at all, if you gave him the money at the time?

A. I signed the check, I know that.

Q. That doesn't refresh your memory as to where he was?

A. No, sir.

Q. And the check in December of 1920 endorsed by him, does that refresh your memory any?

A. No, it does not.

Q. Mrs. Woodruff, yesterday you testified at the time those checks were made out by you, you had a conversation with him and he told you he would buy bonds with the money?

395 A. Yes, sir.

Q. That conversation occurred at the time you gave him the checks?

By Mr. Potter: If the Court please, he asked that question about fourteen different times.

By Mr. Turnbull: There is another reason for it now.

Q. Can you answer the question?

A. These checks do not refresh my memory.

Q. You said yesterday when the checks were given each time he said he would buy bonds with them?

A. Yes, sir, that is what he told me.

Q. When he went to Oregon did you go with him?

A. No, sir.

Q. Did he talk to you at each time when you gave him these checks in July, September, October and November, and he was in Oregon part of the time and Los Angeles part of the time?

A. He was probably in Los Angeles on all those dates.

By Mr. Fieler: If the Court please, I object to the introduction of all of this evidence because there is no issue presented as to that. The burden is upon the other side to

establish the status, it is not up to us to establish residence, that is all immaterial in this hearing.

By the Court: The testimony was brought out by you, go ahead.

By Mr. Turnbull: Counsel mean to say that the witness can say that the man was out of the State for ten
396 years and I can't ask where he was?

By the Court: Go ahead.

Q. I show you exhibit No. "9"; dated July 22nd, 1920, for $10,384.23, made payable to Drake, Riley & Thomas and endorsed by Drake, Riley & Thomas, and you testified yesterday at the time you gave that check you gave it in blank and had a conversation with Mr. Woodruff and he told you he would buy bonds with it, yet you had never seen the bonds, when did you have that conversation with him with respect to that check, the date shown in that check?

By Mr. Potter: We object to that, Mrs. Woodruff testified yesterday that she delivered those checks to him in California on the date each check is given.

By Mr. Turnbull: When these checks were given on a California bank then they were in California, is that right?

By Mr. Potter: Yes, and if they were given in Oklahoma they were in Oklahoma.

By Mr. Turnbull: All right, I will accept that as a stipulation.

By the Court: That would be immaterial it seems, there was a check given here yesterday and cashed here.

By Mr. Turnbull: That is true but we feel he was not out of California much more than two years during that entire time.

By Mr. Potter: He lived here two years at one time and spent years and years and months and months
397 out of the State.

By Mr. Turnbull:

Q. Did Mr. Woodruff use the train or plane service?
A. The train.

Q. Did you ever know him to fly any?
A. No, sir.

By Mr. Fieler: Your Honor please, it may be necessary for me to leave at the conclusion of this hearing due to the fact I came out of a sick bed to come over here to be present.

By the Court: Are you through with this witness?

By Mr. Fieler: I think so, your Honor. And at this time I would like to get permission of the Court subject to any further examination of any witness on cross examination for the bankrupt to present the law applicable to this issue in answer to their claim as set up in their statement with respect to the relationship of the parties.

By Mr. Turnbull: I want to present the evidence before we hear any argument.

By the Court: Which claim?

By Mr. Fieler: This Willie Mae Woodruff claim.

By Mr. Turnbull: I object to counsel attempting to argue the law of the case in the middle of my proof, I do not think counsel has a right to argue the law in the middle of the proof.

398 By Mr. Fieler: If the Court please, I said subject to your proof and any other evidence you desire to offer.

By the Court: I don't think it is a proper time to take that up.

By Mr. Fieler: I want to give my opinion of the law and not make it too long.

By the Court: I will be glad for you to submit it by brief.

By Mr. Fieler: I will be glad to do that, if the Court please.

(Witness excused.)

By Mr. Turnbull: If the Court please, this Court can take judicial knowledge of the respective State Statutes of

the State of California and Oklahoma. I don't expect counsel to agree with me, I will ask you to take judicial knowledge of the following State Statutes—I am offering certain proof by way of the Statutes.

By Mr. Potter: I have not rested as yet, if the Court please.

By Mr. Turnbull: I beg your pardon, that is right.

(And here the testimony of Howard Woodruff was presented to the Court.)

299 By Mr. Turnbull: If counsel finishes with Mrs. Willie Mae Woodruff this afternoon I will require the presence of the bankrupt. I want to examine the doctor to see why he is not here now.

By Mr. Potter: Will you take a professional statement?

By Mr. Turnbull: If the doctor will come here and testify, yes, sir. The bankrupt is deliberately absenting himself from this court room.

By Mr. Fischl: That is an untrue statement deliberately made.

By Mr. Turnbull: No, that is not either.

By the Court: It is now 12:00 o'clock and we will recess until the hour of 1:30 P. M.

(Whereupon court recessed until the hour of 1:30 P. M.)

Thereafter and on the 19th day of November, 1940, at the hour of 1:30 P. M., the above styled and number cause came on for further hearing, the parties hereto being present as heretofore when the following further proceedings were had herein:

By Mr. Potter: If the Court please, on the claim of Willie Mae Woodruff, I desire at this time to place Mr. Woodruff on the stand. However he is not in any condition to come to the stand and if necessary I will produce the doctor and he will testify, so he apprises me that Mr. Wood-

ruff is not able to come down this afternoon but will
400 be able to come down in the morning, he is running
temperature at this time and if it is agreeable I will
place him on the stand in the morning.

By Mr. Turnbull: I don't make any objection to letting the matter go over until morning, I don't object to that. However I want him here as to this claim and also the children's claim. On the first of November I sent a telegram and requested the presence of Mr. Woodruff, the bankrupt and also telegraphed your Honor saying that I wanted counsel requested to produce him and my wire was answered saying that the bankrupt would be present, and they did have him here the first day. The first day we did not have any occasion to use him but if he will be here in the morning, that is fine.

By Mr. Potter: I would like to suspend on the Willie Mae Woodruff matter for the present and I would like to take up the claim of Ida Belle Woodruff.

By the Court: Well, I believe we will adjourn until in the morning at 9:00 o'clock.

(Whereupon Court recessed until November 20th, 1940, at the hour of 9:00 A. M.)

401 Thereafter and on the 20th day of November, 1940, at the hour of 9:00 o'clock A. M., Court met pursuant to recess heretofore taken, the parties hereto being present as heretofore, after which the following further proceedings were had herein:

(Here the claim of Ida Bell Woodruff was taken up and certain proof offered thereon.)

(After which the claim of Herman Woodruff was taken up and certain proof offered thereon.)

(After which Court recessed until the hour of 1:30 P. M. this day.)

Thereafter and on the 20th day of November, 1940, at the hour of 1:30 P. M., Court met pursuant to recess taken for the noon hour, after which the following proceedings were had herein:

(And here the testimony of Leonard J. Woodruff was heard as to the claim of Howard Woodruff.)

(Also the testimony of Leonard J. Woodruff as to the claim of Leonard Woodruff, Jr., was heard.)

By the Court: As I understand it, you have now finished with the claim of Howard Woodruff, Leonard J. Woodruff, Jr., and Margaret Woodruff?

By Mr. Potter: That is right.

By the Court: Have you finished the testimony on the claim of Herman Woodruff?

402 By Mr. Potter: Yes, I think so.

By the Court: These four claims then are ready for decision.

By Mr. Turnbull: Yes, that is true, however I would like to be heard on those matters.

By the Court: Very well. We are now going to recess until Friday morning at the hour of 9:00 o'clock, which will be November 22nd, and you will be back at that time.

(Whereupon Court recessed until November 22nd, 1940, at the hour of 9:00 o'clock.)

Thereafter and on the 22nd day of November, 1940, Court met pursuant to recess heretofore taken, the parties hereto being present, after which the following further proceedings were had herein:

LEONARD WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Examination by Mr. Potter:

Q. Your name is Leonard Woodruff?
A. Leonard J. Woodruff.
Q. You are the debtor herein, are you Mr. Woodruff?

A. Yes, sir.
Q. You are the husband of Willie Mae Woodruff?
A. Yes, sir.
Q. She is a claimant in this proceeding?
403 A. Yes, sir.
Q. How old are you, Mr. Woodruff?
A. I am 53.
Q. Where were you born, Mr. Woodruff?
A. In Southwest Iowa.
Q. Did you later move to Oklahoma?
A. Yes, sir.
Q. And you married in Oklahoma?
A. Yes, I married in Ardmore.
Q. When Mr. Woodruff?
A. In 1914 to my present wife.
Q. At the time you married did you own property in Oklahoma?
A. Yes, sir.
Q. Was any of that property conveyed to you by Mrs. Woodruff?

By Mr. Turnbull: Are you referring to the deeds in evidence?

By Mr. Potter: Yes, sir.

By Mr. Turnbull: That is objected to on the ground it is already in evidence.

By Mr. Potter:

Q. Mr. Woodruff, did the property you owned in Oklahoma produce oil or gas?
A. At a later time, yes, sir.
Q. When did that land produce oil or gas, Mr. Woodruff?
A. 1919, about seven years afterwards.
Q. Did the property of your wife produce oil and gas also?
A. Yes, sir.
Q. Did she receive income off of that property?
A. Yes, sir, she did.
Q. When did that income start Mr. Woodruff?
404 A. In 1919, the latter part of the year I believe.

Q. Did Mrs. Woodruff turn over any of that money to you?

A. Yes, sir.

Q. In 1920?

A. She turned over practically all of it.

Q. What was said to you the time she gave you the first money, Mr. Woodruff?

A. She said she did not know how to transact business and if I would invest the money for her that she thought that would be the best thing under the circumstances to be done.

Q. Pursuant to that conversation did she turn over a great deal of money to you?

A. Yes, sir.

Q. What did you do with it?

A. I took it under the agreement I was to invest it for her in securities and stocks which I considered of value and on the condition that I was to buy a large quantity of bonds for her. And she said she wanted her money invested in good securities.

Q. And did you do that for her?

A. Yes, sir.

Q. Was there anything said in that conversation as to whether or not her money was to be used in speculation?

A. Yes, sir, it was the understanding it was not to be so used.

Q. What became of the bonds you bought for her, Mr. Woodruff?

A. I kept trading and exchanging the bonds under the terms of the bonds at times certain bonds that were theretofore good would become shaky, and I would try to dispose of those and buy others or better bonds at a fair rate of interest and I kept them, the bigger end of them for a period, the bulk of them about nine or ten years.

405 Q. During the time you kept the bonds did they earn any dividends?

A. Yes, sir.

Q. What became of the dividends the bonds earned Mr. Woodruff?

A. They were practically all coupon bonds and when I was in California I would go down and clip the coupons and use the money for re-investment in other stocks.

Q. Did you ever deliver to Mrs. Woodruff either money earned as dividends or the proceeds of these bonds?

A. No, I think—I am uncertain as to the amount. I probably delivered to her some fifty to seventy thousand dollars worth of either dividends, interest or principal back.

Q. You never delivered to her any more than that?

A. Not that I can remember, and I am pretty positive that fifty thousand would be too much. I would say fifty thousand was probably too much and the minimum would be say twenty thousand.

Q. Not to exceed fifty thousand dollars?

A. To the best of my knowledge.

Q. You know when that was done?

A. At various times, I don't remember the dates. It was uncommon it was not very frequent.

Q. What was the average rate of interest drawn by the bonds, Mr. Woodruff?

By Mr. Turnbull: We object to that as a conclusion and cannot be verified as he owned French bonds, the Kingdom of Netherlands, various railroad bonds, utility bonds, some of them for five thousand, some twenty-five thou-
406 sand, some fifty thousand and other and sundry amounts. To ask this witness what was the average rate of interest, unless he shows he has made a calculation of it, is incompetent.

By Mr. Potter: He can give his best judgment.

By the Court: It would be a guess, I believe.

By Mr. Potter: I will withdraw the question.

Q. You have those bonds at this time Mr. Woodruff?

A. No, sir.

By Mr. Turnbull: I thought you stipulated as to that. Go ahead, no objection.

By Mr. Potter:

Q. You never delivered the bonds or the proceeds therefor to Mrs. Woodruff?

A. No, sir.

Q. Except the amount not to exceed fifty thousand dollars?

A. That is correct.

By Mr. Potter: That is all.

Cross Examination.

By Mr. Turnbull:

Q. Did you keep any separate books or accounts concerning the money Mrs. Woodruff gave to you for this investment purpose?

A. I did in the beginning through the income tax and things of that kind, and they disappeared. I don't know where they are.

Q. You have no record now?

407 A. No, sir.

Q. That you know of?

A. No, sir.

Q. The evidence, the documentary proof offered when your wife was on the stand shows $50,000.00 State of Arizona Tax Anticipation Bonds and another purchase of $25,000.00 of other Tax Anticipation Bonds, do you remember they were purchased?

A. I remember the $50,000.00, I don't recall all of them.

Q. The record shows $75,000.00 of this class of securities was purchased?

A. I am thinking there was at least $60,000.00.

Q. One debit slip shows $50,000.00 and a draft $25,000.00 and the record testimony shows that Tax Anticipation Bonds were purchased with that money?

A. Probably so.

Q. Were those high class bonds?

A. Yes, sir.

Q. There was one purchase of $40,000.00 of Fourth Liberty Loan Bonds?

A. Yes, sir.

Q. Did you consider those first class?

A. The highest class.

Q. And the New York Central Railroad Mortgage Bonds, were those also high class bonds?

A. I don't remember now, I don't remember all the companies.

Q. They were Railroad Mortgage Bands, you considered those good bonds or you would not have bought them?

A. I don't remember the Railroad.

A. And the Pacific Mortgage Company?

408 A. Yes, sir.

Q. And the Edison Company of California?

A. Yes, sir, A-1.

Q. And the Kingdom of Netherlands, were they good bonds?

A. Yes, sir.

Q. And the Union Oil of California?

A. They were good bonds, that was a good Company.

Q. You considered those first class?

A. Yes, sir.

Q. The City of Los Angeles Water Work Bonds?

A. I did not know so much about those.

Q. That was your best judgment?

A. I did not think they were bad.

Q. The Republic of France, you thought they were good at the time, didn't you?

A. Yes, sir.

Q. The evidence here shows that on one occasion Mr. Schock of the First National Bank, he sent you a telegram showing you were some $33,000.00 overdrawn in the account and calling your attention to the fact your wife's account was not overdrawn and asked you to cover it as shown here, he authorized a transfer to your account the sum of $30,000.00?

A. I remember there was a large amount, I don't remember the exact amount.

Q. There is a matter here that is somewhat vague, that is in regard to this Oregon ranch, it was purchased subject to $25,000.00 mortgage wasn't it?

A. Yes, and another one for $1,000.00.

Q. Another mortgage?

409 A. Yes, sir.

Q. Your son Howard refers to six ranches or six purchases that made up the ranch, was there six ranches?

A. They are not exactly adjoining they lay as far as nineteen to twenty miles apart.

Q. Six of them in the scope of twenty miles?

A. Yes, sir.

Q. And they are all subject to this one $25,000.00 mortgage?

A. No, all the most valuable ones are.

Q. Some of them are clear of that?

A. Yes, sir, some of it.

Q. Did you buy those six parcels of land from six different people or from the same person in six different purchases?

A. I bought the ranch around 1924 and my son thinks I made six deals, I perhaps made fifteen or twenty. What he has in mind was there were six tracts that join.

Q. Maybe I misled him, I asked him if there were not six purchases made, I might have misled him as to that.

A. There were various tracts of land and I believe some Indian land, I bought 160 acres at times in one tract and other times other numbers of acres; numerous deals and numerous tracts.

Q. Have you got any way of fixing the dates when you disposed of these various securities?

A. No, I have not.

Q. Do you know of or about the time you disposed of the $50,000.00 as on a Tax Anticipation Bonds?

A. No, as well as I remember probably it was— it was very seldom I ever sold bonds of denominations larger than $10,000.00 to individuals and I presume I sold them that way.

410 Q. Isn't it a fact at one time about 1934, first in 1931 or '32, that the United States Government through the Treasury Department called your attention to the fact they had issued a levy on your securities standing in your name in the bank for an income tax assessment for about $425,000.00?

A. It was around $640,000.00 before they got into it and they cut it down to $480,000.00.

Q. It was first $640,000.00 and they reduced it to $480,000.00?

A. Yes, I think so.

Q. Your attention was first called to that fact verbally when a levy of some kind was made against your securities, was that the first time you knew they had levied on your property?

A. I don't understand your question.

Q. Did you find out some time in 1931 or '32 that the United States Government through the Treasurer's Department had levied upon and seized your securities for an alleged income tax assessment for the sum of $64,000.00?

A. That was in December of 1931, yes, sir, I think so.

Q. Do you know a man by the name of— did you know at that time a man named R. F. McCrory?

A. Not out there.

Q. You knew him about that time?

A. I have known him for fifteen or twenty years before that, he lives here.

Q. After you learned this levy had been made on your bonds and securities in California did you and Mr. R. F. McCrory and your son Howard go to Washington,
411 D. C.?

A. About the time of the attachment.

Q. About that time?

A. No, after that time.

Q. Did you know a man by the name of Gardenhire about that time?

A. Yes, sir.

Q. Do you know what his first name is?

A. Bob.

Q. Bob Gardenhire?

A. Yes, sir.

Q. Did you know a man by the name of J. B. Moore?

A. Not well, I had heard of him as an Ardmore attorney.

Q. Any time after you learned that the Government had seized your bonds and securities in Washington for this alleged tax income defalcation did you and your son Howard and Mr. McCrory go to Washington?

A. Any time after that?

Q. Yes.

A. Yes, some time in the spring of 1934, if I remember right.

Q. How long did you stay in Washington, D. C., with Mr. McCrory and Howard Woodruff?

A. I was there about ten days.

Q. You went there in connection with adjusting this amount of alleged income taxes from $640,000.00 to $420,000.00 or less?

A. No, they had reduced it to $102,000.00 and Darnall

had offered to compromise without my consent for $80,000.00.

Q. Do you refer to James Darnall?

A. Yes, sir.

Q. Did James Darnall go to Washington with you?

412 A. No, he did not.

Q. Was he in Washington?

A. He was called by the Income Tax Department or ordered to come to Washington and bring all the papers that he had taken away from the place which involved 150 pounds of paper, he brought one lawyer's grip full.

Q. Did he come to Washington and arrive while you were there?

A. He was there.

Q. And he brought the papers?

A. I don't know, it seems kinda like he did.

Q. He did get there with these papers?

A. He took them to his place.

Q. Had he been employed by you in some capacity?

A. Yes, to figure out the Government fees I owed them for the taxes or something.

Q. He offered to settle with the Government without your authority for $80,000.00?

A. As a compromise, yes, but I rejected it.

Q. While in Washington did you reject that compromise?

A. No, it was previous to that.

Q. While in Washington you were conferring with the Government officials about the tax matters?

A. Yes, it was brought up then.

Q. Did you have any other business in Washington?

A. I had none then. There was another trip made to Washington which I did not go, other people.

Q. On that trip that you did go you were gone ten days with McCrory and Howard, did you have any other business at that time?

413 A. No.

Q. And from that place you came back to Ardmore?

A. Yes, sir.

Q. When you came here you consulted with your then attorney Mr. Moore?

A. Yes, sir.

Q. Did you again return to Washington?

A. No, I did not.

Q. Who went to Washington at that time on your behalf?

A. I believe J. B. Moore went the first time, anyway he went the second time and McCrory and my son Howard and Bob Gardenhire, I think that was all.

Q. How long did you stay that trip, do you remember?

A. I did not go.

Q. How long did they stay?

A. I don't remember.

Q. On the first trip to Washington did your wife go with you?

A. I think so.

Q. You think she did?

A. I think she did and I am pretty sure she did.

Q. After the second trip to Washington after Mr. Moore got back you perfected a settlement with the Government on your taxes?

A. They only gave me ninety days and I asked for three months.

Q. Which was all the same. Did you settle with the Government?

A. Yes, sir.

Q. How much money did you pay the Government in that settlement?

414 A. $50,160.00, I did not pay it all at once.

Q. You know approximately what time you made the payments? What I am getting at is this, you say it was in December, 1931, that they ran the attachment on you, now it was after that, the second trip to Washington had been made, that would bring it up into 1932?

A. It was in 1934 the trips were made.

Q. Do you remember when the payments were made, the compromise wherein you paid the total sum of $50,160.00, is that the amount?

A. Yes, sir.

Q. Mr. Herman Woodruff in connection with the proof on his claim said he came to Los Angeles in 1934 and took the actual money up to the Federal Building?

By Mr. Potter: That was the Darnall judgment.

By Mr. Turnbull: No, I am not talking about the Darnall matter.

Q. I am talking about, he said he made a trip to the Federal Government to pay the income tax, took the money up there to pay the income tax with?

A. As I remember it was the final payment about the middle of 1935.

Q. You think it was the middle of 1935 and was the final payment?

A. I believe it was.

Q. Do you know when the first payment was made?

A. It was not a payment it was an attachment of my oil runs and oil property and a hold-up in 1932, I believe, or possibly at the time they attached it in December of 1931 and the runs and the receipts totaled about $21,000.00 at that time.

415 Q. Isn't it a fact that attachment of your securities and bonds in Los Angeles, that was the first time they attached your securities?

A. That attachment, not only that but the bank boxes as well.

Q. Your safety deposit box?

A. Yes, sir.

Q. And that was at the First National Bank of Los Angeles?

A. Yes, sir, and another bank.

Q. The California Bank?

A. Yes, sir.

Q. At Los Angeles?

A. Yes, sir, and maybe a small account in Ardmore.

Q. They did not attach that did they?

A. I don't remember if I even had one, if I did it was very small.

Q. Did you get any of the money that made up the $50,160.00 that you paid the Government from the sale of any bonds or securities you had at Los Angeles?

A. The best I remember the oil runs amounted up to that period to $21,000.00 and I got $10,000.00 which I owe now from Doug. Davis and that run it up to $31,000.00.

Q. You mean Mr. Davis who filed a claim here and which was allowed the other day?

A. Yes, sir, and I received other money from my mother that did not quite pay it out, it came very near it, my best recollection there was a balance of six or seven thousand

dollars and I am uncertain just how that was paid, but I believe they extended the time and took it out of the runs.

416 Q. I don't think you answered my question, I asked you if you sold any bonds and securities in Los Angeles to pay any of your income tax assessment that comprised the payment you made to the United States Government?

By Mr. Potter: We object to that, he has detailed how it was paid.

A. I don't remember at this time, the best I remember is as I have stated.

By Mr. Turnbull:

Q. Did you have a conversation with your wife, Willie Mae Woodruff on or about the time you purchased these various bonds for her account. I know what you said so far as you had arrangements that she did not want to speculate with it when you bought bonds and you said you thought they were gilt edge but you did trade them off for something that was shaky, when you did that you talked to her about it?

A. Certainly I did very completely, I mentioned the California Imperial Valley Bonds, I did not like them and that Company afterwards went bankrupt.

Q. You purchased $50,000.00 of the Imperial Valley Bonds, you thought they were shaky and they later went under and you traded them off for other types of bonds?

A. For the Salt River Valley, a Government project, yes, sir.

Q. When you traded the bonds of one type to another did you tell her you had traded them?

A. Most of the time I did, yes, sir.

Q. She admitted in this proceedings in support of her own claim when her account was debited, her account with the First National Bank was debited with various sums and the debit slips were issued particularly Exhibit

417 No. "78" in this proceedings for $26,500.00, the slip says, for investment, and Exhibit "78-B" says for investment according to instructions, those two exhibits were shown to Mrs. Woodruff and she was asked as to wh-

gave the instructions and she said you gave the instructions and you were authorized to give them. These two exhibits were shown to your wife and she testified in respect to the instructions for investment that you gave the instructions as to how the money would be used and she gave you authority to use your judgment in the purchase of these bonds.

A. Under the trust agreement when we had money that amounted to anything that was the original agreement, while I do not remember the individual transaction it applies to that.

Q. She said for investment according to instructions, then you gave the instructions and you had authority to give those instructions for her on those occasions, did you discuss with her what securities you had bought and what you had done with them?

A. On perhaps one-fourth of the deals, in other words most of our discussions was as to what were good deals and I offered her bonds and you understand at that time I had an account about three times as much as hers and very frequently I would go to the box and write a bunch of slips, notations on them, and there would be a gallon of them if they could be found. They were in the bank boxes when the Government asked to see the contents of the boxes and they threw them out.

418 Q. There has been introduced in evidence these exhibits for photostatic copies of the books of Drake, Riley & Thomas an account there in the name of Willie Mae Woodruff, I will ask you to look at it. Now it is this page which is marked Exhibit "16" for this hearing and there is a stipulation made by counsel that that is a copy of the books of Drake, Riley & Thomas of the account of Mrs. Willie Mae Woodruff, have you examined that Mr. Woodruff?

A. All I can make out of it.

Q. Have you examined it, I have shown it to you.

A. Yes, sir.

Q. You will notice from this exhibit it appears from this record, it is in the name of Mrs. Willie Mae Woodruff, and it appears under date of May 24th, 1921, and this letter says, "We take pleasure in confirming sale to you, when, as and if issued, for the account of Willie Mae Woodruff, of $10,000.00 Government of the French Republic 20-year

External 7½% Bonds due June 1, 1941 at 95½ and interest," and then follows a debit of $9500.00.

A. I don't see that item.

Q. Right there.

A. Yes, sir, I see it.

Q. You notice in the same year 1921, on October 8th of the same year it says, delivered to Leonard Woodruff account Leonard Woodruff, Sr., you notice that, I show you the entries on that account, do you remember the occasion of transferring the French Bonds to your account, to the account of yourself?

A. Yes, sir.

Q. Do you remember why you did that?

419 A. I think it was paid by Leonard. That implies it was her money I was using and I was using that for something else.

Q. It says transferred to Leonard Woodruff, Jr., and I will show you your account, you remember why you transferred from your account this amount to her?

A. No.

Q. Or the purpose?

A. I am uncertain, the best of my memory I was going to trade that for other bonds.

Q. The evidence shows it was Mrs. Woodruff's money that bought the bonds?

A. Yes, sir.

Q. They were put in her name and I want to know why on October 8th you transferred that to Leonard Woodruff.

A. That was paid by me.

Q. You are looking at an entirely different sheet.

A. No, it is right down there, and I have said time and again that I could not remember these different transactions.

By Mr. Potter: If the Court please, he testified he did not have any personal recollection of it.

By Mr. Turnbull: All right. The witness answered me by going over on the debit side of the ledger instead of the credit side.

Q. We find on November 25th, 1921, transferred to

Leonard Woodruff's account to balance and down further December 21st, 300 shares of Sears Roebuck and the price and 400 shares Cuban American Sugar and the price, and the same day December 20th, 300 shares—

A. That is 400 shares of the Cuban American
420 Sugar.

Q. And the next item is December 20th, 300 shares Cuban American sugar and June 6th V.R.S. Carolina something and the price, and then June 6th $10,000.00 Republic of Bolivia, and April 12th 15,000 Pacific Gas & Electric and 300 Shares, whatever that is right there, and other stocks right here you see, now I am asking you if you know why in 1924 you transferred those items I have read from *from* the account of Willie Mae Woodruff to your own account?

A. These orders were given over the telephone and in some instances I forgot to state the account, they were to be charged to, and there was a confusion in regard to that and some items that should not be in there.

Q. In an effort to show you are mistaken then, Mr. Woodruff, you know you never bought any French Bonds for yourself, the evidence shows she gave you a specific sum of money that she had received and that money was given to you to buy bonds and the record here shows they were purchased in her name?

A. I am referring to the Republic of Bolivia, I am not referring to the French Republic.

Q. She gave you a draft to buy the French bonds and they were bought in her name?

By Mr. Potter: I think it shows a sale of those bonds.

By Mr. Turnbull: I want to show he is incorrect. He did buy though with her money.

By Mr. Potter: This sheet shows they were sold and the money—

By Mr. Turnbull: The witness says he thinks there was a mistake on some of the items.

421 By Mr. Potter: We are using this to show the purchase of the bonds and this is to show the sale of the bonds. That is what that sheet shows.

By Mr. Turnbull: I have a right to ask the witness why he transferred certain French Republic Bonds to his account. We admit they were purchased through the medium of money as Mrs. Woodruff says they were purchased. Certain French Bonds were purchased and we have in evidence exhibits showing there was a buy order and they did buy the French Bonds, and we have now shown there were French Bonds in her name.

By Mr. Potter: That is right, if the Court please.

By Mr. Turnbull: And it shows they were transferred to Leonard J. Woodruff's account.

By Mr. Potter: When?

By Mr. Turnbull: October 8th, I will show all of this account. The money that was put to her account.

By Mr. Potter: That is right it was, I contend it does not show the sale of the bonds.

By Mr. Turnbull: I am not saying that the bonds were not purchased with the money of Mrs. Woodruff. I am trying to show they were transferred to Mr. Leonard J. Woodruff. No doubt but that much of this account of Mrs. Willie Mae Woodruff's will be approved, and if your Honor holds that this money went into these bonds and she can't trace the money into a particular bond, and I do not see how she can, then I am entitled to show when the interest started if this was a trust to invest or reinvest, and it is governed by the California law, and that law provides that the trustee is bound to keep on investing the money, and your Honor says that is the law. Now, after he sold the French bonds, if we can show when it was, that interest item is a lot of money, and that is all I am trying to do. My contention is if this was a true, and the present state of the evidence it appears that it was, and which no doubt the Court will find, when he took the money, if he took $10,000.00 and bought French bonds with it he had performed his trust up to that time. If he sold the bonds and did not re-invest the money he is liable to Mrs. Woodruff for the money he converted them into cash for, and if he did not within a reasonable time re-invest that money he is liable for the interest on the amount of money received therefrom.

422

By Mr. Potter: How about the dividends?

By Mr. Turnbull: She can't have both. She would be entitled to the dividends during the time if it was her property. If he converted the bonds he must re-invest the money within a reasonable time that is true. When he bought the bonds he was carrying out the trust, when he con-
423 verts the bonds into money and don't reinvest he is entitled to pay interest on the money.

By the Court: Until he bought the bonds the claimant would be entitled to the interest.

By Mr. Turnbull: That is right.

By Mr. Fischl: Mr. Potter asked Mr. Woodruff what dividends were paid on the bonds. The record does not show what rate of interest they drew, or what dividends they paid.

By Mr. Turnbull: In a way we are substitued in place of the trustee to do this, they say you have to account for this money Mr. Woodruff, and Mr. Woodruff says he does not know how many coupons he cut and does not know the rate of interest. Now I will say we think he is liable for this money, and I want to show when he transferred them to his account, that is what I am up against, and as to the rate of interest it is governed by the Statutes and laws of the State of California.

By Mr. Potter: Has it been made a part of this record?

By Mr. Turnbull: I don't think I have to, the Court will take judicial notice of it. It is Section 2238, and then another section, 2261 of the Civil Code, the next section is the penalty for failure to invest. What I have in mind dur-
ing the time he was acting in good faith buying these
424 bonds, he is not liable to Mrs. Woodruff for only the coupons that he did not account to her for, and I want to establish the date these bonds were sold, or transferred to his account, and if he did not invest that money then his estate is liable for interest, either simple interest or compound interest, that is my purpose.

By Mr. Potter: The Bankrupt or the Trustee are unable to show us what we would be entitled to as dividends.

and for that reason we are entitled to interest on our money.

By Mr. Turnbull: You are entitled to interest, not compound interest. I want to show on what date he did anything wrongfully, but from a certain date he said he took the money in violation of the trust and used it, and it is a serious question here.

By Mr. Potter: I think it is a sales record and not a purchase record.

By Mr. Turnbull: It shows on May 24th, 1921, there was in the hands of the brokers $10,000.00, $9500.00 worth of that particular bond actual value and I want to show when they, if the bonds were sold, or the amount transferred to his account what he did with it. I asked him if he knows the occasion, or what was the occasion of transferring
425 those to his account. I offer in evidence in re which relates to the books and accounts of Drake, Riley & Thomas and the books of—

By Mr. Potter: Page 16 is in evidence, but the first fifteen sheets were objected to the other day and your Honor sustained the objection and insofar as this claim is concerned to the first fifteen sheets.

By Mr. Turnbull: It was objected to by Mr. Fieler.

By Mr. Potter: I don't see how those exhibits would in any way benefit in this matter.

By Mr. Turnbull: Only show when he transferred the account. I want to call your Honor's attention to what it is.

Q. You sold those French bonds or ordered them sold?
A. Yes, sir.
Q. In that sheet, Page 16, it shows transferred to the account of Leonard Woodruff, Sr., when you got the money did you reinvest it in something else?
A. Yes, sir, I reinvested it unless I came to Oklahoma. That is about the time I came to Oklahoma and stayed about eleven months, the best I remember there were three deals in French Republic Bonds covering some $40,000.00.

By Mr. Potter: And what does that show?

By Mr. Turnbull: I would say on October 8th transferred to Leonard Woodruff's account.

By Mr. Potter: No, I can't see where they were transferred. The transfer is some $12,447.00 and the French Bonds were $9500.00.

426 By Mr. Turnbull:

Q. You remember buying Kelly Springfield Bonds?
A. I bought some, I don't remember.
Q. Did you buy some for yourself?
A. Yes, sir.
Q. The evidence shows in the exhibits by her there was Kelly Springfield bonds purchased?
A. Yes, sir.
Q. As far as you know these items appear on the column to the extreme right showing Cuban American Sugar Company stock, those were securities you purchased with Mrs. Woodruff's money and you had them, is that true?
A. Some of that was a mistake, some of that was my personal account.
Q. Tell us which was yours.
A. I don't remember altogether now.
Q. Your general account will close out at a later date and I want to know what part of it was yours and what part was hers.
A. I can't remember that.
Q. Will you read from Exhibit "16" what you think was not hers?
A. I don't see how I could possible do that.
Q. I show the item of Mrs. Willie Woodruff of June 6th, the Republic of Bolivia, $101.00 net, you think that was hers or yours?
A. I think it was bought for my account.
Q. You think the rest of it was Mrs. Woodruff's?
A. No, there is too much stock in there, I bought some stock for myself and more bonds for her.

427 Q. Can you help us by telling us what you don't think was hers and is in there by error?
A. No, I can't remember now.
Q. The items right there—(Indicating) 10,000 Shares, you don't think you bought any of that?

A. I don't think so.

Q. Anything else besides that item there and the Bolivia Republic bonds, you think the rest of that is correct?

A. I think those two are incorrect. As to the others, I don't remember, I had other stocks in my own account and I can't remember.

Q. And it says here July 12th, 1924, transferred to Leonard Woodruff $19,043.20, that closed out her account on that date?

A. This is dated in 1921.

Q. Down here in 1924?

A. I thought the last transaction was in 1924.

Q. Maybe to help you I show you exhibit, this exhibit attached to this stipulation which is now in evidence entitled the account of Leonard Woodruff, regular account, there is one sheet and another sheet, Leonard Woodruff another one, the first three exhibits one regular account, and the next sheet four it says Leonard Woodruff's special bond account, does that refresh your memory that you had a regular trading account with Drake, Riley & Thomas and a regular account?

A. I came to Oklahoma and I instructed Drake to buy certain things in my account, there was about twenty thousand I put in his hands to buy and sell on my account.

Q. During what time?

428 A. When I was in Oklahoma.

Q. I notice item No. 6, Exhibit No. "6" entitled Leonard Woodruff Special Bond Account, that started in 1922 and these other Special Bond Accounts, Exhibit No. "4", that is entitled Special Bond Account and it started in 1922 and runs over into 1923 and 1924.

By Mr. Potter: Are they a continuation of the other?

By Mr. Turnbull: Yes, and runs up into 1924.

Q. You notice that Special Bond Account was closed out in 1924?

A. I came back to drill a wild-cat oil well.

Q. You notice this Special Bond Account opened in 1922 runs to the last day of the year 1924?

A. I was not here that long.

Q. You were here about eleven months?

A. Yes, sir, about a year.

Q. That says paid $29,000.00 on the 21st day of December, 1924?

A. Yes, sir.

Q. Look at your Special Account, isn't it a fact some of the stock you purchased for your wife's account you transferred and into your Special Bond Account?

A. I don't think so, he was to transfer this money except where I thought it was not good and I replaced it with other stocks but I don't remember what stock.

Q. Isn't it the reason that Willie Mae Woodruff's account that you had it transferred to your bond account for the reason it could not be placed that way?

A. No, that is not a fact.

Q. And this stuff purchased by and for the benefit of your wife's account was handled by you under your
429 Special Bond Account, I am doing this to fix a date.

By Mr. Fischl:

Q. Mr. Woodruff, in every instance in which you sold bonds you had bought for your wife's account did you replace, when they were sold, did you replace those bonds with bonds of like value?

A. Yes, sir, approximately so, in each instance.

By Mr. Turnbull:

Q. During this time you say you did dispose of the proceeds of your bonds you were endeavoring to get good investments for her during that entire time?

A. Only when I was back here I dropped it, I was not doing anything with it right then.

Q. During the time you were actually engaged in using your wife's money to buy bonds and stocks and up to the time you took the money and used it for your own purpose you were endeavoring to get it in good stock?

A. Yes, sir.

Q. And when you saw certain stock was going to drop you traded those for something good?

A. Yes, sir, I tried to.

Q. It appears from this other evidence that your wife introduced here that her money was being used long after the time that her account with Riley & Thomas was used

and transferred to your account, I will ask you if it is not a fact you were handling her securities in your Special Bond Account. I think the record will show that.

By Mr. Potter: Some of the same issue was in his name.

By Mr. Turnbull: He had some of the same issue.

430 Q. You have there 300 shares of Sears Roebuck?

A. And I have a lot of the same stock.

Q. I will ask you this, there is an item of French Republic Bonds, the item is shown in your wife's account, you purchased that for her, and the evidence shows her money bought that amount of bonds, they were bought out of her account and the evidence your wife introduced shows her money bought the French Bonds, and the record shows they were in her account, did you buy any French Republic Bonds?

A. Yes, to the best of my recollection I bought in all a total of some thirty-five or forty thousand dollars.

Q. Have you got any way of knowing whether the French Republic Bonds appearing in Exhibit No. "16" which I interpret it as showing was transferred to the Leonard Woodruff Sr., account or the same bonds that appear in your Special Bond Account of Drake, Riley & Thomas. We find Kennecott Copper Company stock in 1921, September 10th, in the account of Willie Mae Woodruff and a reference to your Special Account shows Kennecott Copper in your account at a date after her account was closed out with Drake, Riley & Thomas, you know whether or not that was the same Kennecott Copper Company stock that was transferred to you on March 17th, 1924, when we find 100 shares of Kennecott Copper Company?

A. There is 800 more.

Q. February 1st, 800 shares of Kennecott Copper, you got any way of knowing that is the same Kennecott Copper stock you had in her account or was it another issue?

A. It could not be.

431 Q. Have you got any way of knowing when the Kennecott Copper stock in Mrs. Willie Mae Woodruff's account was sold?

A. Not unless you figure it out from the records there.

Q. The Kennecott Copper Company stock I find Kenne-

cott Copper in your account, any way for you to tell us after the clos' out of the account of Mrs. Woodruff if it is the same s ock referred to in your Special or General Account?

A. No, only I bought a lot of the same stock, I bought for her, which proves that I thought it was a good investment.

Q. In your Special Bond Account there is Kennecott during the time you were trading in her name in the same stock but afterwards her account was closed out and I want to know if the stocks and bonds were handled in your name for her?

A. No, the broker only had authority to deal specifically for me.

Q. It appears from documentary evidence that Mrs. Woodruff gave you money for investments along after the time her account with Riley, Drake & Thomas was closed out, the last entry appearing was in the month of July, 1924, for her on that sheet.

By Mr. Fischl: There is nothing to show that is a complete record of the account.

By Mr. Potter: Mrs. Woodruff testified she delivered this money to Mr. Woodruff for the purpose of buying bonds and he accepted it as such, purchased the bonds and placed them in the box and they would not appear in the books.

By Mr. Turnbull: It was after this account was closed out in her name she continued to give him money
432. and he handled that in the Special Account and at a certain date he took and hypothecated those securities and bonds and he is liable for interest from that date.

By Mr. Potter: I want the Court to understand the bonds would not appear on the account if he received the bonds.

By Mr. Turnbull: Long after her account closed out she was still giving him money to buy bonds.

By the Court: Go ahead.

By Mr. Turnbull:

Q. Mr. Woodruff, I show you Exhibit "3" attached to the stipulation, Heiser's Exhibit "1", now in evidence, which says, "Leonard Woodruff, Los Angeles, California," and the opening of that sheet shows December 23rd, 1920, were you living at 4624 South Figueroa Street at that time?

A. Yes, the home of my mother.

Q. That is where you and your wife were sleeping and eating your meals?

A. Yes, sir.

Q. Did you open that account?

By Mr. Potter: I think counsel is proceeding on the wrong theory, he did not keep this record, he is not responsible for what it shows.

By Mr. Turnbull:

Q. Were you dealing with Drake, Riley & Thomas on the date shown on this exhibit "3" in the month of
433 December, 1920, were you dealing with Drake, Riley & Thomas at that time?

A. Yes, before that.

Q. And were you on that date?

A. Yes, sir.

Q. Did you deal with Drake, Riley & Thomas continually on through 1920 and 1921?

A. The best I remember until 1926.

Q. Even you think on up into 1926?

A. Yes, sir, I think so.

Q. Your wife testified when she gave you checks in a great many instances the checks were in blank as to the amount of the checks as to the name of the payee and I take at random from her exhibit, Exhibit "15", the only handwriting thereon was a signature, then you or someone else filled out the check and the amount now read $15,980.63, that is your handwriting, is that correct, this handwriting and the amount here?

A. Yes, sir, the reason you could not have the amount written in, you would not know the accrued interest.

Q. And the payee is stamped in?

A. Yes, sir; they got the check for the bonds or securities.

Q. The evidence shows some of those stocks were taken.

such as Exhibit "11", a check to Drake, Riley & Thomas for $5,114.44 which is attached to Exhibit "11-A" of Drake, Riley & Thomas, confirmed a sale to you in your name and she says it was put in your name but it was her stock or bonds, which seems to be indicated by your statement on the bottom of Exhibit "11-A"?

A. Yes, sir, this statement means I put them in the bank box.

434 Q. These bonds were bought with her money?

A. Yes, sir.

Q. This invoice is made to you in your name and actually paid for by her money?

A. Yes, sir.

Q. Isn't it a fact in instances of that kind when you used her check, she delivered you a check given to you in blank the bonds were bought in your name, you knew they were being set up on that trading account in your name and I am trying to fix the date you got rid of them?

A. Yes, if I remember she had a separate account which was for the purpose of trying to keep the books clear.

By Mr. Potter: According to the exhibits the record shows Mrs. Woodruff's account was not opened until May of 1921.

By Mr. Turnbull:

Q. You know if she did or did not have an account at that time that was being put on your account?

A. They had to be one of the books, some one book at least.

Q. In those instances when you gave them the money and they bought the securities in your name, setting it up on your regular account, you know the books would show when you traded that particular security you held for Mrs. Woodruff, when you sold them off?

A. No, that doesn't say anything about the sale.

Q. From time to time Drake, Riley & Thomas gave you statements of securities that you had bought and sold in your name?

A. Yes, sir, generally as I would register the statements.

Q. Can you fix the time, you testified you did invest and

reinvest these monies authorized and delivered to
435 you by your wife and you clipped the coupons and put the money back into such stocks for your wife, as you deemed proper, for nine or ten years, that would bring you up to 1930. After 1930 you say you disposed of the stocks and securities and did not give the money to Mrs. Woodruff, is that correct?

A. That is correct.

Q. What was the purpose of you taking the stocks and securities and using the money yourself about that time, were you needing more money than you were getting?

By Mr. Potter: We object to that, maybe he did not do that.

By Mr. Turnbull:

Q. I am refering to the time you say you took the stocks and got the cash and used it for your own purpose.

A. If I remember right I had about $500,000.00 in bonds and securities in the bank boxes, I did not say they were mine personally in 1930 and some of these bonds they had quit paying interest and dividends owing to the depression and I conceived the idea myself of buying and selling stocks with this money, would that answer the question?

Q. That was the depression in 1930?

A. Yes, sir.

Q. You were going in and buy.. g and selling on the market, is that it?

A. Yes, sir.

Q. That would take you out of the class in which you had invested this money and put you in a speculative class?

A. The New York Stock Market, yes, sir.

Q. What character of stock did you then buy when
436 you conceived the idea of trading in stocks, you just merely went into the market?

A. Yes, sir.

Q. Through what brokers did you buy stock, I am talking about speculative stocks.

A. I don't recall all of them.

Q. You mean such as Slaughter, Anderson & Fox?

A. Yes, sir.

Q. And they broke up?

A. Yes, sir, and one changed the name two or three times.

Q. The firm originally was Slaughter, Anderson & Fox, and the name was changed to Anderson & Fox?

A. I never had any business with them after they changed the name.

Q. Some of these exhibits, "28" I think, I show you Exhibit "28" is that your handwriting, that check to A. O. Slaughter, Anderson & Fox. Your wife said that was her signature and some one else filled in the amount?

A. I am not sure.

Q. You know whose handwriting it is in?

A. No, sir, I don't.

Q. It is dated May 18th, 1931, to confirm that look at Exhibit "28-A", "28" is dated the 18th and Exhibit "28-A" is dated the 19th.

A. This looks like my handwriting.

Q. Are you referring to Exhibit "28"?

A. To the check.

Q. The word five thousand, you think that is your handwriting?

A. Yes, sir.

Q. You know the name of A. O. Slaughter, Ander-
437 son & Fox, you don't know whose handwriting that is in?

A. I don't believe it is mine.

Q. Do you refresh your memory from that check so you can say in 1931 you were trading with Slaughter, Anderson & Fox?

A. Yes, sir, the forepart of the year.

Q. What other brokerage firms did you trade with?

A. The Bank, the First Securities Company and the American Bank, I believe, and the stock companies changed their names.

Q. We have here Hentley & Company, did you deal with them?

A. Yes, that was another one.

Q. And Slaughter, Anderson & Fox?

A. Yes, sir.

Q. And later Anderson & Fox?

A. I don't think I ever dealt with Anderson & Fox.

Q. I show you Exhibit "28" marked for identification

in favor of A. O. Slaughter, Anderson & Fox, Mrs. Woodruff says that instrument was given in payment of $5,000.00 in money which she expended by her check Exhibit "28".

A. I have no recollection of ever being in a place they owned.

Q. Does that refresh your memory in 1931 you were dealing with Slaughter, Anderson & Fox, it does or it does not?

A. No, it does not, I don't remember it.

Q. You remember anyone else you dealt with after 1930 other than Danks Hentley and Slaughter, Anderson & Fox?

A. I never dealt with Drake, Riley & Thomas in speculative stocks at all and the others Danks Hentley & Company and Slaughter, Anderson & Fox, I dealt with them in 1930 and the forepart of 1931, as I recall maybe eight months of 1931, maybe nine months.

438 Q. You were dealing then almost solely with the New York Stock Market?

A. Yes, sir.

Q. There is a difference in time, the Stock Market opens at 7:00 o'clock in the morning in California to get the 10:00 o'clock business there, that is what happened in those days when you were trading?

A. That is when I was trading with them.

Q. The New York Stock Market due to difference in time opens at Los Angeles at 7:00 o'clock in the morning?

By Mr. Potter: That is immaterial here.

By Mr. Turnbull: None of these stocks shows to be speculative stocks and these stocks were bought with his wife' money, they were standard good stocks, I take it that they were up to 1930.

By Mr. Potter: The question is whether it makes any difference whether he bought it at 7:00 o'clock in the morning or 10:00 o'clock.

By the Court: That is immaterial, sustained.

By Mr. Turnbull:

Q. Did you personally conduct the buying and selling after 1931 of the stocks?

A. Not after 1931

Q. After 1931?

A. Not after that.

Q. You did not trade any after 1931 you say?

A. Yes, I did not personally, I was sick and the Government attached me.

Q. After 1931 you did not trade in any speculative
439 stocks?

A. No, I was trading up in December of 1931, that is when I ceased.

Q. Did you trade in speculative stocks after 1931 in December?

A. I don't believe I can answer, I don't know what you are trying to get at.

Q. You have testified in 1930 when conditions were bad, up to that time you had used your wife's money to buy good bonds and stocks, after 1930 you conceived the idea to deal in speculative stocks, how long did you deal in speculative stocks?

A. The Government stopped me in December of 1931, and after that I was not released until 1934 or 1935, it was about 1935.

Q. How long after you conceived the idea in 1930 to deal in speculative stocks was it until you ceased business?

A. My health stopped me before December, I was unable to do that.

Q. Did you, after you conceived the idea of dealing in speculative stocks, did you ever deal in that kind of stocks or was that just an idea, you did not carry out?

A. In 1929 and a little in 1930 and a little in 1931.

Q. Did you use the money that you got from the sale of your wife's good bonds to speculate in the market?

A. Yes, I did.

Q. How much, when did you take her gilt edge securities and sell them and convert them into money and speculate with the funds, when did you do that, start to do that?

A. The bulk of it went in 1930 and the forepart of 1931, maybe a few in the latter part of 1929.

Q. At the time the Government attached your
440 stock in Los Angeles in December of 1931, then all of her money was gone, all the bonds you had for her

you had disposed of them by that time, or did you still have some of them?

A. I don't like to answer that question, I have settled with the Government and I don't want to bring up that disputed question again or that dispute.

Q. Your wife wants a certain amount of money plus interest from the time you wrongfully took her money there is no trick to it at all. At the time the Government put this attachment on you—

A. I had at that time some forty, between forty and forty-one thousand shares of New York stock and I considered that she owned part of this and when the crash came or when I was attached about that time the market broke and they went to nothing.

Q. In what was that forty to forty-one thousand shares invested?

A. I could not give you that as to all of them, but as far as Locomotive Stock I had 3100 shares and there was only 100 shares in the Company.

Q. What else did you have in that 40,000 shares?

A. I am not in a very good condition and it would be an innumerable list.

Q. Did you consider those stocks as speculative or standard stocks?

A. I was buying New York Stocks because I considered I was speculating in them.

Q. You mean you were buying them on margin and not buying them outright?

A. Small margins.

441 Q. Do you know the difference in buying outright and buying it through a broker and putting up a small margin?

A. Yes, sir.

Q. These 40,000 shares of stock you had those on margin then, you had not bought them outright and paid for them?

A. I owed the broker not over $45,000.00 and I had individual property they were actually loaning me $100,000.00 on and in 1931 in December, when the Government levied on me it ruined me.

Q. In 1931 when the Government levied on your stocks

and bonds, at that time you had taken all of the bonds that you considered belonged to your wife and sold them?

A. Practically all of them.

Q. How much of that cash did you put in the American Locomotive and other stocks that you had on the New York market?

By Mr. Potter: I object to that, if the Court please, he testified he had in 1931 disposed of most of her bonds.

By Mr. Turnbull: If you find it is an investment trust the question will arise if he converted these admitted sound securities and thereafter put them into another class of stock and I am entitled to know whether that was wilful or not.

By Mr. Potter: We make no contention that it was wilful.

By Mr. Turnbull: I accept the stipulation, compound interest, that would take the matter of compound interest out of this question.

Q. Do you know if you had any of Mrs. Woodruff's so called gilt edge bonds and stocks on hand in December of 1931 when the Government ran the attachment on
442 you, did you have any of the good stuff on hand belonging to Mrs. Woodruff?

A. Maybe a little of it.

Q. Do you think you had the French Republic bonds?

A. No, I had disposed of those long before.

Q. Do you think you had the $40,000.00 United States Liberty Bonds you bought for her?

A. Well, I can't remember just what I did have.

Q. You have no way of finding out now have you?

A. I can make a general statement is all. But I had sold some of those two years prior, the best of my memory about $83,000.00 of Liberty Bonds had been sold, but as to who they belonged to, I do not remember.

Q. You mean in 1930 and '31?

A. Yes, sir, or prior thereto.

Q. You think the time the Government attached your property at Los Angeles you had the State of Arizona Tax Anticipation Bonds which Mrs. Woodruff claimed amounted to $75,000.00

A. I had $10,000.00 and I believe $20,000.00 of those.

Q. Of those left at the time, that is what you mean?

A. Yes, sir, I can give you a little further explanation. After the Government ordered a sale of the bonds and were holding my bank boxes all at once they released this stuff.

Q. I asked you at the time they levied on it which you say was in December of 1931 for something like $600,000.00 at that time had you sold the State of Arizona Tax Anticipation Bonds which you had bought for Mrs. Woodruff

443 in the sum of $75,000.00?

A. I had $10,000.00 worth maybe.

Q. You think you had sold the $40,000.00 Liberty Bonds?

A. I had sold $83,000.00 worth.

Q. You think that included all of the $83,000.00 you mean you think that included her $40,000.00?

A. Well, I am not sure.

Q. You think you had the $40,000.00 worth which you had purchased for her account at that time?

A. I had $83,000.00 worth in all and I figured I would replace that money with other bonds, whether I had or not I do not remember. I figured I would do that before she called on me for an accounting.

Q. Did you ever buy more than $83,000.00 worth of Liberty Bonds for your account and for your wife's account, both of them?

A. Yes, I expect I did.

Q. Is that the reason you are unable to tell us if you had disposed of those bonds?

A. Yes, sir.

Q. Had you disposed of the Edison Bonds?

A. Yes, sir.

Q. The Kingdom of Netherland Bonds?

A. Yes, sir.

Q. And the Union Oil of California?

A. I am not sure.

Q. The City Water Works Bonds?

A. Yes, sir, they were gone.

Q. And the French Republic Bonds you purchased some for her account and some for your account?

A. I think I disposed of those two or three years

444 previous to that.

Q. And the New York Central Railroad Bonds?

A. I don't remember the bonds.

Q. Would it help you if I would show you the buy order on that?

A. It might.

Q. You remember $25,000.00 of Utah Bonds, you remember those, does that recall to your mind any bonds purchased?

A. No, I would not know them by that name, I don't remember.

Q. How much of the money that you got from the sale of these bonds that you considered good gilt edge bonds, how much of that money did you put, withdraw the question. You say by this time in December of 1931 you had disposed of by sale most of the bonds, the so called gilt edge bonds and stock you bought for the account of your wife?

A. The bulk of it.

Q. How much of that money had you put into the purchase of the 40,000 shares of the New York Stock market stocks?

A. Practically all of it and $150,000.00 more.

Q. All from your wife's bonds and stocks and $150,000.00 of your own?

A. Yes, sir. and I believe more than that, possibly $250,000.00.

Q. You were not trying to lose your wife's money, were you?

A. No, sir, I was not.

Q. Were you trying to promote her general financial interest?

A. Yes, sir.

Q. And trying to make money with your own
445 $150,000.00 in the same deal?

A. Yes, sir.

Q. Did you tell her at any time you were buying New York stocks on the market?

A. She knew it, I did not tell her, and I considered most of the money I was dealing with at that time as hers.

Q. What did you tell her?

A. I did not have to tell her. I did not have to tell my

wife hardly anything, I did as I pleased without much discussion. I was not the head of the house entirely of course.

Q. I have here before me a statement of Drake, Riley & Thomas dated February 4th, 1921, as Willie Mae Woodruff's Exhibit No. "16", which shows purchase of American Locomotive stock, were you buying American Locomotive stock in 1921?

A. Yes, sir.

Q. And buying this stock shown on Exhibit No. "16" Montgomery Ward & Company stock and General Motors stock and United States Steel Corporation stock, Sears Roebuck and so forth, were those the stocks you were buying on the New York Market?

A. Yes, sir.

Q. Did you consider at that time that General Motors was a good or was it a speculative stock?

A. I believe I said it was speculative.

Q. I am asking you what you considered General Motors stock as?

A. Standard.

Q. And United States Steel?

446 A. That is a standard stock.

Q. Did you tell your wife you were buying that type of stock that you are talking about now?

A. As far as I remember I did not discuss it with her just then.

Q. You said she know you were buying this stock, did she say anything about you not buying such stock as General Motors and United States Steel?

By Mr. Potter: He said he was buying for himself.

By Mr. Turnbull:

Q. Did your wife complain that you should not buy United States Steel in that language or any other language?

A. It was not discussed.

Q. Did you tell her you were buying United States Steel Corporation stock?

A. I don't remember if I did, if I did it was a casual remark.

Q. What would the remark be?

A. I would not remember.

Q. Did you tell her you were buying General Motors Stock?

A. I don't know.

Q. Do you say she knew or did not know you were buying General Motors Stock?

A. I would not know.

By the Court: Gentlemen it is now 12:00 o'clock and we will recess until the hour of 1:30 for lunch.

(Whereupon Court recessed until 1:30 o'clock P. M., this day.)

Thereafter and on the 22nd day of November, 1940,
447 at the hour of 1:30 P. M., Court met pursuant to recess taken for the noon hour, the parties hereto being present as heretofore, after which the following further proceedings were had herein:

LEONARD J. WOODRUFF, recalled, having been heretofore duly sworn, testified as follows:

Further Examination.

By Mr. Turnbull:

Q. You say that you had $150,000.00 of your own money invested with the money of your wife in this 40,000 shares of mixed stocks on the New York Stock Market, did you lose your $150,000.00.

A. It all went when the Government attached my property in the sale and for these taxes.

Q. Do you mean the United States Government ordered the shares of your stock sold to pay your income tax?

A. Yes, but after three days they refuted the order, but the stuff had already been sold.

Q. The United States Government did conduct the sale of your stocks?

A. They ordered it sold, yes, anyway it was disposed of by order of the Board some way and I never realized anything.

Q. That case included the 40,000 shares of the New York Stock Market which you say you and your wife owned?

A. Yes, sir.

Q. In your opinion some of the stock sold under that order was stuff that belonged to your wife as well as yourself?

A. She did not know it but I considered it that
448 way.

Q. Most of it was sold under the order of the United States Government to satisfy the income tax and that included the stock of your wife as well as yourself?

A. Yes, sir, they held that as a joint income tax sale while they did not attach her property her stuff was sold.

Q. The Government at that time claimed you or your wife had made returns for a good many years?

A. About seven years I believe.

By Mr. Potter: I object to that, he testified it was all sold, he said they claimed they sold it because they should not make a joint return.

A. We had put in separate returns and I have since then, that was on the recommendation of Mr. Darnall, the man employed by me.

Q. That was the end of Mrs. Willie Mae Woodruff's stock and shares that was sold at that time?

A. There were a few left maybe.

Q. How many or how much in value was left?

A. I think $9,000.00, 1100 shares.

Q. How much in value?

A. I don't know.

Q. $10,000.00, $100.00 a share?

A. No, it was not worth that, not $10,000.00.

Q. How much would it be?

A. I would guess it probably, I would not know.

Q. Wasn't it about $100,000.00?

A. No, it was not, I would say maybe fifteen or eighteen thousand dollars.

Q. What became of that?

449 A. I think, I don't remember which one it was. I think the last one or the last batch was sold in about some time in 1934, I don't remember what stock it was.

Q. When you say the Government ordered it sold that was the early part of December, 1931?

A. Yes, sir.

Q. After that sale occurred there was fifteen to eighteen thousand dollars left of Mrs. Woodruff's stock and bonds?

A. Yes, sir.

Q. Do you know who got that $18,000.00 worth of stock?

A. I was sick at the time, she did not know it. I had $10,000.00 of this River Valley in the house and I considered it worth $10,000.00 par value.

Q. Is that the $10,000.00 Mr. Darnall took and credited you with for his services, is that the $10,000.00 worth of stock he took and said, "Here is a receipt on account of my services?"

A. He did not give me a receipt. $7,000.00 was for living expenses and the other $3,000.00 was to be used in this marginal account, that was what I wanted it for.

Q. Mrs. Woodruff did not get it?

A. And she did not know it was her stuff.

Q. That particular stuff she did not know anything about it. I direct your attention to January 15th, 1933, could you tell us where you were at that time?

A. January 15th, 1933?

Q. Yes.

A. No, I don't remember, I probably could in 1932. I don't know where I was in 1933.

Q. Do you remember writing a letter dated Janu-
450 ary 15, 1933 and signing the same in which you say over your signature, "I may have been rather poor in guardianship through sickness and inability but you know the stocks have not been dissipated, do you remember writing such a letter to your wife?

A. No, sir.

Q. Were you present when the trial of the case of Darnall vs. yourself in the Superior Court in the State of California at Los Angeles?

A. All except one day or part of a day.

Q. Did you see such a letter introduced in evidence there as I have described?

A. No, sir.

Q. You have no recollection about it at this time?

A. No, sir.

Q. At the time the United States Government levied on and ordered sold the stock at Los Angeles in the early part

of December, 1931, did your wife know you were having difficulties about your income taxes?

A. Not unless, not otherwise than a personal remark of mine as to some threats about Coleman and Carroll.

Q. Mr. Coleman was your attorney at the time?

A. No, he was not.

Q. He had been?

A. Yes, sir.

Q. Did he go to Mrs. Woodruff and tell her about your trouble with the Government?

A. No, Mr. Carroll.

Q. He told your wife about the trouble?

A. He made threats.

451 Q. Who was he?

A. He is dead now and Coleman sued me for $85,000.00.

Q. When you settled up the last payment in 1934 on your income tax that was about the time you signed the—(Withdraw that). This morning you told us you settled with the United States Government by paying $50,160.00 and that sum was paid in three or more installments?

A. At least four I believe, maybe three, I don't remember.

Q. There were payments made during the year 1934 and the last payment was the middle of 1935?

A. As near as I can remember maybe the forepart.

Q. In the claim filed against you by your wife, Willie Mae Woodruff, there was a credit on that claim of $95,000.00 by the sale of certain property, do you recall the sale of that property to your wife?

A. Yes, I did not have the cash and owed $48,500.00 taxes on it and my account was still attached and I was going to lose it and I considered it more valuable than that, and I was trying to make up for all this loss just as much as possible.

By Mr. Turnbull: That is all just now.

Examination by Mr. Potter:

Q. Mr. Woodruff, there has been introduced in evidence a run sheet from the Carter Oil Company showing Mrs. Woodruff's income from the Carter Oil Company from 1920

to 1930, do you know whether or not Mrs. Woodruff had any income in the year 1919, did she receive any money during that year that you remember?

A. She had several deals whereby she got other
452 income at that time, only one that I recall in 1919, I could not specifically state what amount but she sold a 20 acre lease to the Carter Oil Company and some other Company associated with them, but the deal was made direct with the Carter Oil Company and they assigned this other half interest for the sum of $45,000.00.

Q. That was paid to her during 1919 as a bonus? That $45,000.00 received as a bonus for the 20 acres?

A. Yes, sir.

By Mr. Turnbull: We object to that as leading.

By the Court: Go ahead.

By Mr. Potter:

Q. You were questioned regarding the transfer of an account of Mrs. Woodruff to you for $30,000.00 or some other amount, I forget just what it was.

A. I put some of these slips in the bank with a rubber band around them, in the bank box, such as you have a few of here, and the rest had been destroyed but I wrote the notations that you will find on those.

Q. Is that a reinvestment of the money you received pursuant to her telegram to cover an overdraft of yours? (Handing instrument to witness.)

A. Yes, sir.

Q. Mr. Woodruff, during the years 1931 to 1939 were you in the State of California all the time?

A. No, sir.

Q. Do you know how much of the time you were not in the State of California during those nine years?

A. No, not definitely, I was in Oregon and Oklahoma, I would estimate I was out of the state a little over half
453 of the time.

Q. Does that apply especially to the years '35 to '38?

By Mr. Turnbull: We object to that as calling for a conclusion of the witness.

By the Court: Sustained.

By Mr. Potter:

Q. Mr. Woodruff, how much of the time were you in the State of California during the years 1935 to 1939?

A. I was in Washington, D. C., the forepart of 1934 and when I came back to Ardmore I was here a considerable time, I think that will answer for that year, I am not sure. Probably six or eight months of the time in 1934, maybe practically all the time I was here.

Q. In 1935 how much of the time were you in Calfornia?

A. I think I was in Oregon two or three months of that time.

Q. And were you in Oklahoma during that time?

A. I am not sure; I think so.

Q. Were you in California as much as six months in the year 1935?

By Mr. Turnbull: That is calling for a conclusion of the witness and is leading and suggestive.

A. I don't recall, I think I was in Oklahoma part of the time.

By Mr. Potter:

Q. To the best of your judgment how much of 1935 were you in the State of California?

A. I don't recall that now.

Q. Can you approximate it?

A. I don't believe I would, I would have to try to look up the records.

Q. How much of the time were you in the State of
454 California in 1936?

A. May I answer that indirectly, I remember fifteen or twenty years transaction better than the last few years and my mind has been rather hazy on those things.

Q. You don't know how much of the time you were out of the State of California during 1936?

A. I don't know, it seems to me I was out of the State seven or seven and a half months.

Q. That was in 1936?

A. Yes, sir.

Q. And in 1937 how much of the time were you out of the State of California?

A. I don't seem to be able to remember right now, I don't know, if it is my present condition or what it is, I don't know, I can't remember those things though.

By Mr. Potter: If the Court please, I understand Mr. Woodruff will be back on the stand anyway.

By Mr. Turnbull: I want him back on this one matter in regard to the time he spent in California. I have a great deal of data showing where he was and I want to examine him rather fully as to that.

Witness excused.

WILLIE MAE WOODRUFF, recalled for further examination by Mr. Turnbull, testified as follows:

By Mr. Turnbull:

Q. You are the claimant in this case?

A. Yes, sir.

By Mr. Turnbull: If the Court please, this witness is called under the provisions, under the new rules which
455 permit the calling of an adverse party without being bound by the testimony.

Q. There is a house, residence property on Iveness Avenue, Los Angeles, California, will you tell me the number of that house?

A. 2436 Iveness Avenue.

Q. Heretofore in the bankruptcy proceeding but not in this particular matter Mr. Woodruff testified that property was purchased with your funds and cost about $97,000.00?

A. Yes, sir.

Q. That money you got from the Carter Oil Company runs did you?

A. Yes, sir.

Q. Did you buy the household furniture out of your funds?

A. Yes, sir.

Q. Approximately you spent about $50,000.00 for that?
A. I think somewhere around that.
Q. That came out of the money you got from the Carter Oil Company did it?
A. Yes, sir.
Q. Isn't it true from about 1920 to 1930, out of your own money, the money you got from the Carter Oil Com-
456 pany, you contributed out of that money about $300.00 a month to run the house?
A. I would not remember that now.
Q. You would not remember whether for the ten years you paid approximately $300.00 a month to run the house out of your own funds?
A. I paid some.
Q. From 1920 to 1930 you contributed regularly about $300.00 a month to maintain the household of yourself and family from your own money?
A. I don't remember.
Q. Did you contribute anything that you received to maintain the household?
A. Yes, sir.
Q. How much a month would you say it was during that time?
A. I don't remember, I will say to you I did contribute some.
Q. I will tell you that I got those figures from one of your attorneys and I am trying to get the facts from you.
A. That is probably correct.
Q. That is why I used the figures to you now.
A. I don't know just how much it was but I used considerable.
Q. You know approximately how much a month you put in each month to run the household?

By Mr. Potter: We object to that, she answered that three or four times.

By Mr. Turnbull: If you think I am after her too rough I will quit, that is all right, that is all.

Witness excused.

By Mr. Potter: I think I will rest as far as Willie Mae Woodruff's claim is concerned at this time, your Honor.

State of Oklahoma, County of Carter.

457 I, O. E. English, Court Reporter, hereby certify that on the 18th, 19th, 20th and 22nd days of November, 1940, I took the oral testimony of Mrs. Willie Mae Woodruff, and Leonard J. Woodruff in a hearing before Hon. Geo. F. Clark, Referee in Bankruptcy, at Ardmore, Oklahoma, in matter of Leonard J. Woodruff, Bankrupt. That said testimony was correctly taken in shorthand and thereafter transcribed, and that the within and foregoing is a true and correct copy of said testimony.

Witness my hand as such Reporter this the 16th day of September, 1943.

O. E. English, Court Reporter,
(Reporting this case by agreement of parties)

[WILLIE MAE WOODRUFF EXHIBITS.]

[Willie Mae Woodruff Exhibit 1.]

General Warranty Deed.

This Indenture, Made this 7th day of October, A. D. 1919, between Leonard J. Woodruff, of Carter County, in the State of Oklahoma, of the first part, and Willie May Woodruff, his wife, of the second part

Witnesseth, That in consideration of One Dollar, and love and affection, the receipt whereof is hereby acknowledged, said party of the first part does by these presents, grant, bargain, sell and convey unto said party of the second part, her heirs and assigns, all of the *the* following described real estate, situated in the County of Carter, State of Oklahoma towit: North Half of South Half of Northwest Quarter; and Southwest quarter of Southwest quarter of the Northwest quarter; and Southeast quarter of Northwest quarter of the Northwest quarter, all in Section Fifteen (15) Township Four (4) South, Range Two (2) West.....

.....

.....

To Have and to Hold the Same, Together with all and singular the tenements, hereditaments and appurtenances thereto belonging, or in any wise *apertaining*, forever.

And said Leonard J. Woodruff, his heirs, executors or administrators do hereby covenant, promise and agree to and with said party of the second part, at the delivery of these presents, that he is lawfully seized in his own right of an absolute and indefeasible estate of inheritance in fee simple of and in all and singular the above granted and described premises, with the appurtenances; that the same are free, clear, and discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances, of whatever nature and kind, and that he will Warrant and Forever

Defend the same unto the said party of the second part her heirs and assigns, against said party of the first part, his heirs or assigns, and all and every person or persons whomsoever claiming or to claim the same.

In Witness Whereof, The said party of the first part has hereunto set his hands the day and year first above written.

(Seal) LEONARD J. WOODRUFF.

State of Oklahoma, Carter County, ss.

Before me, Freeman Galt, a Notary Public in and for said County and State, on this 7th day of October, 1919, personally appeared Leonard J. Woodruff, to me known to be the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.

(Seal) FREEMAN GALT.

My commission expires 1-29-23.

70050
V J

No. ..... General Warranty Deed from Leonard J. Woodruff to Willie May Woodruff. 15-4S-2W.

State of Oklahoma, County of Carter, ss.

This instrument was filed for record on the 7 day of Oct. 1919 at 2 o'clock P.M., and duly recorded in book D36, page 518, of the records of this office.

CLARENCE HARRIS, Clerk.

..... Deputy.

Box 718—City

(50-cent U.S.I.R. Documentary Stamp Attached)

[Willie Mae Woodruff Exhibit 2.]

The Carter Oil Company

Statement of Willie May Woodruff's Interest in Oil and Gas Run From the Following Leases During the Years 1920 to 1930, Inclusive

L. J. Woodruff Lease (W½ SW¼ NW¼ & W½ W½ SW¼ Sec. 15-4S-2W, Carter County, Oklahoma

Year in Which Oil Was Run	(Interest in Oil) January	February	March	April	May	June	July	August	September	October	November	December	Total For Year
1920	$ —0—	$ —0—	$ —0—	$ —0—	$ 3 570.17	$ 3 059.56	$ 7 022.71	$ 6 939.87	$ 7 588.53	$12 836.15	$10 731.98	$ 9 903.07	$ 61 652.04
1921	18 384.17	8 513.18	13 784.91	18 677.11	20 406.68	26 731.67	33 430.64	30 398.53	23 175.43	26 912.07	27 976.88	21 598.34	269 989.61
1922	20 833.69	16 465.14	16 274.96	13 341.32	12 803.28	9 790.44	9 226.55	7 298.38	7 232.50	6 996.42	6 804.79	7 767.42	134 834.89
1923	9 598.39	10 275.31	10 266.45	8 687.69	7 358.56	6 296.54	6 160.22	6 483.14	6 650.15	5 764.97	4 840.33	3 711.27	86 093.02
1924	4 600.43	5 412.62	6 291.69	6 062.07	6 259.01	5 304.54	5 532.04	4 886.47	4 470.29	3 118.59	2 910.38	3 174.60	59 022.73
1925	2 251.75	2 411.47	2 791.41	2 893.03	959.44	914.69	940.51	927.37	764.48	844.14	736.57	766.19	17 201.05
1926	717.48	749.22	833.33	804.94	895.65	816.42	869.81	971.57	937.15	895.19	734.30	766.27	9 991.33
1927	658.79	601.52	503.49	402.63	480.87	413.15	367.11	407.99	397.03	367.94	366.03	343.09	5 309.64
1928	369.35	358.59	353.37	344.27	353.69	343.19	356.35	361.00	319.50	361.11	327.30	322.01	4 169.73
1929	345.06	275.78	278.02	316.06	326.26	312.59	337.44	314.44	339.76	337.49	299.14	322.97	3 805.01
1930	291.59	257.31	232.28	280.90	268.82	264.34	279.39	288.37	256.10	252.83	172.56	188.42	3 032.91
Total						(Interest in Oil)							$654 101.96

May Woodruff Lease (SE¼ NW¼ NW¼ & NE¼ SW¼ NW¼ Sec. 15-4S-2W Carter County, Oklahoma)

1920	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ —0—	$ 61.29	$ 1 341.86	$ 622.48	$ 2 025.63
1921	561.19	398.77	1 180.51	8 332.61	11 341.65	6 444.23	3 809.33	3 069.75	2 453.74	2 548.64	3 568.02	3 768.38	47 476.82
1922	3 216.56	2 430.78	2 670.10	2 186.76	1 987.92	1 579.10	1 083.05	921.38	676.55	948.84	1 004.85	1 296.89	19 912.78
1923	1 228.90	1 438.83	1 396.63	1 266.77	827.72	886.65	739.27	699.39	622.18	613.29	451.79	475.01	10 645.83
1924	446.32	501.31	895.65	661.67	715.58	595.02	695.06	579.05	485.54	363.84	297.37	378.80	6 615.21
1925	335.04	411.64	478.93	473.53	471.65	520.40	488.69	470.70	332.32	441.41	339.38	323.31	5 087.00
1926	332.02	316.12	411.47	374.05	384.60	399.69	349.08	353.64	412.81	365.66	310.64	197.72	4 207.50
1927	304.88	253.70	219.78	177.74	176.85	178.68	143.82	172.67	176.36	168.87	146.77	200.04	2 320.16
1928	143.69	142.31	144.31	142.41	113.82	112.58	139.98	175.25	146.90	148.92	147.50	172.67	1 730.34
1929	142.84	128.54	108.58	160.24	119.48	125.44	157.99	154.24	130.76	129.65	181.91	130.64	1 670.28
1930	139.72	107.36	133.15	114.70	146.22	116.18	143.98	146.08	144.86	115.10	81.09	108.22	1 496.66
Total													$103,188.21

Totals by Years, Oil and Gas

Year	Oil	Gas	Total
1920	$ 63,677.67	$ —0—	$ 63,677.67
1921	317,466.43	63.80	317,530.23
1922	154,747.67	223.46	154,971.13
1923	96,738.85	478.49	97,217.34
1924	64,637.94	452.49	65,090.43
1925	22,288.05	378.23	22,666.28
1926	14,198.83	559.32	14,758.15
1927	7,629.80	383.30	8,013.10
1928	5,900.07	358.65	6,258.72
1929	5,475.29	359.34	5,834.63
1930	4,529.57	203.43	4,733.00
Total	$757,290.17	$3,460.51	$760,750.68

[Willie Mae Woodruff Exhibit 3.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
4624 So. Figueroa, St.,
Los Angeles, Calif.

Los Angeles, May 13, 1920

$5000 U.S. Government Third Liberty Loan 4¼'s

Price: 88 ¾	$4437.50	
Interest: M&S 15th. Accrued 1 mo. 28 da.	34.25	
Plus Commission	12.50	$4484.25

Maturity: September 15, 1928

**Bot for Wille May Woodruff* *Sold at 86.48*
Paid for out of her personal acct
(1) Lenard Woodruff Sold

Paid May 13, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By (Illegible initials).

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 4.]

The First National Bank of Los Angeles 16-3

Los Angeles, May 13, 1920

Pay to the Order of Drake, Riley & Thomas $4,484.25

.....$4484 and 25 Cts..... Dollars

No. 50 WILLIE MAY WOODRUFF

(Perforated bank stamp)—5-14-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 5.]

First National Bank of Los Angeles, Cal.

Customer's Draft.

*OK (Illegible initials).

75705

Los Angeles, Cal. Mar. 15, 1920.

.....Pay to the order of

First National Bank of Los Angeles 16-3 $25000.00

Twenty Five thousand ..... Dollars

Value received and charge to account of .....

.....

To Guaranty State Bank, Ardmore, Okla.

†(2) In

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-22-20 66-56

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp bank endorsements: First National Bank of Los Angeles, First National Bank of Ardmore, Oklahoma, Los Angeles Branch Federal Reserve Bank of San Francisco, The Federal Reserve Bank of Kansas City.

*Appears in handwriting in ink on original.
†Appears in handwriting in pencil on original.

[Willie Mae Woodruff's exhibit 6 is the original claim of Willie May Woodruff which appears at page 1.]

[Willie Mae Woodruff Exhibit 7—6 checks.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Jul. 13th 1920

Pay to the Order of Leonard Woodruff $5300.00

Five Thousand and Three Hundred 00/100 ..... Dollars

No. 4 WILLE MAY WOODRUFF

(Perforated bank stamp)—7-13-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, July 22nd 1920

Pay to the Order of Leonard Woodruff $400.00
Four Hundred 00/100 ..... Dollars

No. 6 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-22-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 14th 1920

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

No. 7 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-14-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 25 1920

Pay to the Order of Leonard Woodruff $2376.00
Twenty three Hundred and Seventy Six ..... Dollars

No. 8 a WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-25-20.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Nov. 13th 1920

Pay to the Order of Leonard Woodruff $900.00
Nine Hundred 00/100 ..... Dollars

No. 8 b WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 11-13-20.

On reverse—Endorsed in pencil by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 13th 1920

Pay to the Order of Leonard Woodruff $250.00

*250—

Two Hundred and Fifty 00/100 ..... Dollars

No. 8 c WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 12-13-20.

On reverse—Endorsed in ink by Leonard Woodruff.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 8.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Jul. 13 1920

Pay to the Order of Drake, Riley & Thomas $8657.47

$8657 and 47 cts. Dollars

No. 49 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-13-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 8-a.]

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
Los Angeles, Calif.,

Los Angeles, July 20, 1920

$10,000 U. S. Gov't Liberty Loan Fourth 4¼'s,
Price: 85.18 $8518.00

Interest: A&O 15th. accrued 3mos. 6ds. 113.33

Plus Commission (¼ of 1%) 25.00 $8656.33

Maturity: October 15th. 1938

*Bot for Wille May Woodruff. Paid for out her personal acct. LEONARD WOODRUFF (5).

Paid Jul. 22, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake,

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 9.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 22nd 1920

Pay to the Order of Drake, Riley & Thomas $10,384.23
Ten Thousand Three Hundred and Eighty Four 23/100 Dollars

No. 37 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-22-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 10.]

The First National Bank of Los Angeles 116-3]

Los Angeles, Oct 2nd 1920

Pay to the Order of Drake, Riley & Thomas $2452.92
$2452 and 92 cts. Dollars

No. 38 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-2-20.

On reverse—Rubber stamp endorsement—Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 10-a.]

Drake, Riley & Thomas.
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
4624 South Figueroa,
Los Angeles, Cal.

Los Angeles, Oct. 2, 1920

$3000 Southern California Edison Co. Gen. Mtge. 5's

Price: 80½ 2415.00
Interest: J&J 1st. Accrued 3 mo. 1 da. 37.92 2452.92

Maturity: November 1, 1939

D. R. & T. Due Bill #1071

Paid Oct. 2, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake.

[Willie Mae Woodruff Exhibit 11.]

The First National Bank of Los Angeles 116-3

Los Angeles, Sept. 28th 1920

Pay to the Order of Drake, Riley & Thomas $5,114.44

Five Thousand and One Hundred Fourteen 44/100 Dollars

No. 40 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-28-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 11-a.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.,
Los Angeles, Calif.,

Los Angeles, Sept. 28, 1920

$5,000 Government of the French Republic 8's.

Price: 102 $5,100.00

Interest: M&S 15th. accrued 13ds. 14.44 $5,114.44

Maturity: September 15th. 1945

No: Interim Cert. #264.

These bonds are the personal property of Wille Mae Woodruff bot with her money. LEONARD WOODRUFF.

Paid Sep. 28, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By *DGD.*

Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 12.]

The First National Bank of Los Angeles [16-3]

Los Angeles, April 26th, 1920

Pay to the Order of Drake Riley & Thomas $458.68

Four Hundred Fifty Eight 68/100 Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—4-27-20.

On reverse written in pencil appear the words *inst or exp.* Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 12-A.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff
L. A.

Los Angeles, 4/26/1920

500 U. S. Govt. L.L. 3rd 4¼ Due 9/15/1928 C 91		*Sold @* 455.00	*86.48*
	Int.	2.42	
Plus com ¼ of 1%		1.25	$458.67

**Bot for Wille May Woodruff*

sold

Paid Apr. 26, 1920. Drake, Riley & Thomas, Los Angeles, Cal., By H. J. Drake.

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 13.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 13th, 1920

Pay to the Order of Drake, Riley & Thomas $3134.59
Three Thousand One Hundred Thirty Four 59/100 Dollars

No. 51 WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 5-14-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 13-A]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff,
L. A.

Los Angeles, 5/13/1920

3500 U. S. Govt L.L. 3rd 4¼ Due 9/15/1928	C 88⅝	3101.88	
	Int—1-28 da	23.96	
		3125.84	*Sold at* 86.375
	Plus com ¼ of 1%	8.75	
			$3134.59

**Bot for Wille May Woodruff with her personal money.*

Leonard Woodruff *Sold*

Paid May 13, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By—

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 14.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 7th, 1920

Pay to the Order of Drake, Riley & Thomas $6240.70
Six Thousand Two Hundred and Forty 70/100 ..... Dollars

No. 42 WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 9-7-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 14-A.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
Los Angeles, Calif.

Los Angeles, Sept. 7, 1920

$7,200 U. S. Gov't Liberty Loan
Fourth 4¼'s,
Price: 85 $6,120.00
Interest: A&O 15th. accrued 4mos.
22ds. 120.70 $6240.70

Maturity: October 15th, 1928.

Personal Property
Wille May Woodruff
Leonard Woodruff

Paid Sep. 7, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By HJD.

Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 15.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 13th, 1920.

Pay to the Order of Drake, Riley & Thomas $15,980.63
Fifteen Thousand and Nine Hundred Eighty 63/100 Dollars

No..... WILLIE MAY WOODRUFF.

(Perforated bank stamp)—Paid 12-13-20.

On reverse written in pencil appears the word *Bonds*. Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 16.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.,
City

Los Angeles, Feb. 4, 1921

Dec. 8th. 200 shs. Montgomery Ward & Co. Stock	$3445.00
Dec. 8th 125 shs. General Motors Stock	1903.75
Dec. 4th. 200 shs. Montgomery Ward & Co. Stock	3945.00
Dec. 4th. 175 shs. General Motors Stock	2664.38
Dec. 9th 100 shs. U. S. Steel Corp'n Stock	8022.50
Dec. 15th 100 shs. Sears Roebuck Co. Stock	9322.50
Dec. 15th 100 shs. American Locomotive Stock	7997.50
Dec. 23rd 100 shs. U. S. Steel Corp'n Stock	7835.00
Dec. 23rd 100 shs. American Locomotive Stock	7872.50
Dec. 24th $10,0000 U. S. Gov't Second Liberty Loan 4¼'s	8438.54

Dec. 24th 30,000 U. S. Gov't Fourth Liberty Loan 4¼'s	25,589.87	
Dec. 29th 200 shs. Kennecott Copper Co. Stock	3145.00	
Dec. 29th 100 shs. American Smelting & Refining Co. Stock	3085.00	
Dec. 31st short sale 200 shs. Montgomery Ward Stock	8.00	
Jan. 26th $13,000 City & County of San Francisco 5's	12,386.40	
Feb. 3rd. 100 shs. Sears Roebuck Co. Stock	8622.50	
Feb. 3rd. 100 shs. Sears Roebuck & Co. Stock	8422.50	
		$122,705.94

Credit:

Nov. 12th. By cash	$13,000.00	
Dec. 13th. " "	15,980.63	
Dec. 23rd. " "	11,136.90	
Dec. 23rd. 400 shs. Montgomery Ward & Co. Stock	5069.37	
Dec. 23rd. 300 shs. General Motors Co. Stock	3795.00	
Dec. 23rd. 100 shs. U. S. Steel Corp'n Stock	7777.50	
Dec. 23rd. 100 shs. American Locomotive Stock	7827.50	
Dec. 24th. $10,700 U. S. Steel Corp'n Stock	8999.89	
Dec. 24th. 50 U. S. Gov't Second 4's	43.66	
Dec. 24th. $850 U. S. Gov't Third Liberty Loan 4¼'s	7744.01	
Dec. 24th. 20,000 U. S. Gov't Fourth Liberty Loan 4¼'s	17,009.92	
Dec. 31st. 100 shs. American Locomotive Stock	8271.00	
Dec. 31st. 100 shs. U. S. Steel Corp'n Stock	8121.00	

Jan. 15th. $1500 U. S. Gov't Third Liberty Loan 4¼'s	1369.37	
Jan. 17th. 50 U. S. Gov't First Liberty Loan 4¼'s	43.39	
Jan. 17th. 250 U. S. Gov't Second Liberty Loan 4¼'s	219.66	
Jan. 17th. 200 U. S. Gov't Third Liberty Loan 4¼'s	183.15	$116,563.95

Credit: Balance Due Us: $ 6,141.99

Interest @ 6% for 22 days, Nov. 12 to Dec. 4 on $13,000	$47.67	
Interest @ 6% for 4 days, Dec. 4 to Dec. 8 on $6,391	4.22	51.89
	Balance Due $	6,090.10

Paid Feb. 5, 1921. Drake, Riley & Thomas, Los Angeles, Cal. By H. J. Drake.

[Willie Mae Woodruff Exhibit 17.]

Los Angeles, Cal., April 12, 1920.

Pay to the Order of Drake, Riley & Thomas $9149.46

R

Nine thousand One hundred Forty nine and 46/100 Dollars

To First National Bank
Los Angeles

WILLIE MAY WOODRUFF.
Address 4624 So. Figueroa St.
Phone.....

(Perforated bank stamp)—Paid 4-12-20.

On reverse written in pencil appears the word *Bonds*.

Rubber stamp endorsement, Drake, Riley & Thomas.

*Word and letter in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 17-a.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.,
Los Angeles, Calif.

Los Angeles, April 10, 1920

$10,000 U. S. Gov't Fourth 4¼'s, Price: 89.28	$8,928.00	
Interest: A&O 15th. accrued 5mos. 27ds.	208.96	
Plus Commission (1/8 of 1%)	12.50	$9,149.46

Maturity: October 15th. 1938

Sold
for Bot Wille May Woodruff
Paid for out her acct.
Leonard Woodruff

These bonds sold @ 84.36

Paid Apr. 12, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By D.G.D.

*Words and figures in italics appear in pencil on original.

[Willie Mae Woodruff Exhibit 18.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Apr. 16, 1920

Pay to the Order of Drake, Riley & Thomas $8691.68
..... $8691 and 68 Cts. .....Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 4-17-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff, Esq.
4624 So. Figueroa St.
Los Angeles, Calif, A/C Wille May Woodruff

Los Angeles, April 15, 1920

$10,000 U. S. Government Fourth Liberty Loan 4¼'s		
Price: 86.78	$8678.00	
Interest: A&O 15th. Accrued to Apr. 16	1.18	
Plus Commission (⅛ of 1%)	12.50	$8691.68

Maturity: October 15th, 1938.

Paid Apr. 16, 1920. Drake, Riley & Thomas, Los Angeles, Cal., by D.G.D.

[Willie Mae Woodruff Exhibit 19.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 8th, 1920.

Pay to the Order of F. Natl. Bank of Los Angeles $1816.22
Eighteen Hundred and Sixteen 22/100.....Dollars

No. 49 WILLE MAY WOODRUFF. *H

(Perforated bank stamp)—Paid 6-8-20.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 20.]

Drake, Riley & Thomas
Government, Municipal and Corporation Bonds
210 West Seventh Street
Van Nuys Building

Sold To
Leonard Woodruff,
Los Angeles, Calif.

Los Angeles, July 22, 1920

$2000 U. A. Gov't Fourth Liberty Loan 4¼'s		
Price: 85	1700	
Interest: A&O 15th accrued 3 mos. 7ds.	22.90	
	1722.90	
Plus Commission	5.00	$1727.90

Maturity: October 15th 1938

*Bot for Wille May Woodruff
paid out of her personal acct.
Leonard Woodruff*

Paid Jul 22, 1920. Drake, Riley & Thomas, Los Angeles, Cal. By H J Drake.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 21.]

The First National Bank of Los Angeles [16-8]

Los Angeles, July 2nd, 1920

Pay to the Order of Leonard Woodruff $350.00
Three Hundred and Fifty 00/100.....Dollars

No. 13 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-2-20.

On reverse—Endorsed in ink by Leonard Woodruff.

[Willie Mae Woodruff Exhibit 22.]

Security First National Bank of Los Angeles
1st Natl Office Branch No. 22279
Jan 3 1931

Received from Wille May Woodruff .....
Five Thousand One & 20/100 ..... Dollars $5001.20/100
For Telegraphic Transfer of 5000.00/100 to 1st Nat Bk Ardmore Okla Credit Acct Herman Woodruff.....

Transfer $5000.00/100

Telegram and Costs $ 1.20/100

It is understood that in forwarding this amount the undersigned will use any means of transmission or communication commonly in use, including telephone and telegraph, by wire or wireless and shall not be responsible for any inaccuracy, interruption or delay in transmission or delivery of telegram and does not guarantee payment in cities where it has no correspondent.

*18 a SECURITY-FIRST NATIONAL BANK OF LOS ANGELES
By WILLIAM V. DAVIS

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 23.]

A. O. Slaughter, Anderson & Fox
443 So. Spring St. Phone FAber 5111

No. R 27507

Los Angeles, Cal., 4/23 31

Lenard Woodruff Account (Illegible initial)
.....

We have this day received the following securities:

No. Shares	Security	Certificate No.	In Name of	Remarks
21M	Chicago Burlington & Quincy 5% 2/1/11 (F & A)	M28858/78-2/1/30	& Subsequent Cpns. Attch (21x1M)	

Respectfully Yours,

A. O. SLAUGHTER, ANDERSON & FOX
KC Cashier

(19) (Box)

[Willie Mae Woodruff Exhibit 24.]

(100) Los Angeles, May 16, 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
A. O. Slaughter, Anderson & Fox $5000.00
Five Thousand 00/100 ..... Dollars

(20) WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB 5-19-31.

On reverse:

Rubber stamp endorsement—A. O. Slaughter, Anderson & Fox.

O.K. for deposit: By Spence, Vice President.

Rubber stamp endorsement—Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 25.]

A. O. Slaughter, Anderson & Fox
443 South Spring Street
Los Angeles

Members
New York Stock Exchange
Chicago Stock Exchange
Chicago Curb Exchange
Chicago Board of Trade
New York Curb Exchange
(Associate)

Jan. 26, 1933.

Mr. Leonard Woodruff

We acknowledge receipt from yourself of the following securities:

70	shs	See	1st	Natl	#022187	n/o	Leonard	Woodruff
50	"	"	"		#014659	"	"	"
15	"	"	"		#03602	"	"	"
100	"	"	"		#4289	"	Willie May	Woodruff

These securities are to be entered into your account with ourselves as instructed.

Very truly yours

O/O A. O. SLAUGHTER, ANDERSON & FOX
(29) O. E. DAVIDSON.

[Willie Mae Woodruff Exhibit 26.]

No. 22885 12/31

First National Bank of Los Angeles, Cal.

Received of Wille May Woodruff

for Collection

the following described items:

On State of Utah
At Salt Lake City Utah
5 Bonds @ 5000 each
71-2-3-4-5-

Always Bring This Receipt

Dated Due
No. Amt. $25000.00
Memo. 78821
Leonard Woodruff

First National Bank of Los Angeles

(25) By (Illegible initials), Collection Teller

[Willie Mae Woodruff Exhibit 27.]

(100) Los Angeles, 6/1/31 1931 No.

First National Office

Security-First National Bank of Los Angeles 16-4/12

Seventh & Spring

Pay to the order of

Slaughter, Anderson & Fox $2500.00

Twenty five hundred dollars only ..... Dollars

24 Wille May Woodruff

(Perforated bank stamp)—FNB—LA 6-2-31.

On reverse:

Rubber stamp endorsement—A. O. Slaughter, Anderson & Fox.

Rubber stamp endorsement—Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 27-a.]

Original

Anderson & Fox

443 So. Spring St. Los Angeles, Cal.
Phone FAber 5111

C 16044

$2500.00 Date 6-1-1931 (Illegible initial)

Received of Leonard Woodruff
Address .....
Twenty five hundred no/100 ..... and /100 Dollars
on a/c
Cash .....
Check 16-4 Wille May Woodruff

ANDERSON & FOX
24 LUCAS, Cashier

[Willie Mae Woodruff Exhibit 28.]

(100) Los Angeles, May 18, 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
A. O. Slaughter Anderson & Fox $5,000.00
Five Thousand 00/100 ..... Dollars

(21) WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-20-31.

On reverse:

Rubber stamp endorsement, A. O. Slaughter, Anderson & Fox.

O.K. for deposit: By Spence, Vice President.

Rubber stamp endorsement, S. F. N. B.

Rubber stamp endorsement, Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 28-a.]

Original

Anderson & Fox

Beverly Wilshire Hotel Beverly Hills

C 20753

$5000.00 Date 5/19/31
Received of Wille May Woodruff
Address .....
Five Thousand Dollars .....xx/100 Dollars

For Credit on Acc't Leonard Woodruff

Cash .....
Check √ 16-4

ANDERSON & FOX
(21) ROBERT CORLIN, Cashier

[Willie Mae Woodruff Exhibit 29.]

(100) Los Angeles, May 21st 1931 No.....

First National Office

Security-First National Bank of Los Angeles 16-4/12
Seventh & Spring

Pay to the order of
Slaughter Anderson & Fox $12,500.00
Twelve Thousand Five Hundred 00/100 ..... Dollars

22 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-23-31.

On reverse:

Rubber stamp endorsement, A. O. Slaughter, Anderson & Fox.

Rubber stamp endorsement, Security-First National Bank of Los Angeles.

[Willie Mae Woodruff Exhibit 29-a.]

Original

Anderson & Fox
Beverly Wilshire Hotel Beverly Hills
C 20758

$12,500.00 Date 5/22/31

Received of Wille May Woodruff
Address .....
Twelve Thousand Five Hundred Dollars ....xx/100 Dollars

"Credit to Acc't of Leonard Woodruff" On Stock Acc't.
Cash .....
Check √16-4

ANDERSON & FOX
22 ROBERT CORLIN, Cashier

[Willie Mae Woodruff Exhibit 30.]

First Securities Company
Owned by the Stockholders of
The First National Bank of Los Angeles
——and the——
Los Angeles Trust & Savings Bank
Los Angeles
Bond Department
First National Bank Office

July 22 1922.

Mrs. Willie May Woodruff,
262 S. Mariposa Ave.,
Los Angeles, Cal.

Dear Mrs. Woodruff:

Complying with Mr. Woodruff's instructions, we are today charging your account with the First National Bank of Los Angeles, $14,406.24 being payment in full for:

$15,000 par value New York Central Railroad
Refunding & Improvement Mortgage,
5% Bonds, due 2013 @94½ and accrued Int.

Our receipt #1242 covering the transaction is enclosed

herewith and upon arrival of the bonds, we shall be pleased to notify you.

With kind personal regards, I am

Very truly yours,

FIRST SECURITIES COMPANY,
By O. H. Shock,
First National Bank Office.

*(13)

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 31]

Bond Department
First Securities Co.

Received from Wille May Woodruff
Name Address

($15,000) Fifteen Thousand Par Value
Interim Receipts for, or temporary N.Y. Central Railroad Co.
Name of Issue

Ref. & Imp. Mtg. 5%, 2013 Series C.
($ 100 Denomination .....
Numbers ($ 500 Denomination .....
($1000 Denomination T.M. 59573 to 59587

The permanent coupon securities described below, to be received in exchange for the above, will be delivered only upon the return of this receipt.

Received the following Permanent Securities:

($ 100 Denomination.....
Numbers ($ 500 Denomination.....
($1000 Denomination.....

Bond Department
.....
First Securities Co.
Dated..... 192....
By E. V. Forue,
Dated 3/9, 1923

*(13)

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 32]

Klamath Falls, Ore., Oct. 30th, 1923

At sight ..... Pay to the Order of
The First National Bank of Klamath Falls, Oregon,
$14,000.00
Fourteen Thousand ..... Dollars
With Exchange

To First National Bank
Los Angeles, Cal.

Value Received and Charge to Account of
WILLIE MAY WOODRUFF

*(16)

(Perforated bank stamp)—Paid 11-2-23

On reverse:

Rubber stamp endorsement, Los Angeles Branch, Federal Reserve Bank of San Francisco.

Rubber Stamp Endorsement, Wells Fargo Nevada National Bank of San Francisco.

Rubber stamp endorsement, First National Bank, Klamath Falls, Oregon.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 33.]

The First National Bank of Lakeview

Lakeview, Oregon, Oct. 29, 1923

At Sight
Pay to the Order of First National Bank of Lakeview,
Lakeview, Oregon $7500.00
Exactly Seven Thousand Five Hundred Dollars ..... Dollars
With Exchange and Collection Charges
For Deposit
For value received and charge to account of

To First National Bank
Los Angeles, Calif.

WILLIE MAY WOODRUFF

*(14)

(Perforated bank stamp)—Paid 11-2-23.

On reverse:

Rubber stamp endorsement, The Crocker National Bank of San Francisco, Cal.

Rubber stamp endorsement, First National Bank, Lakeview, Oregon.

*Appears in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 34]

The First National Bank of Lakeview

Lakeview, Oregon, Oct. 29, 1923

At Sight

Pay to the Order of First National Bank of Lakeview, Lakeview, Oregon.....$1500.00

Exactly Fifteen Hundred Dollars No Cents.....Dollars

With Exchange and Collection Charges

For First payment on the E. O. Pratt Cattle.

For value received and charge to account of

To First National Bank

*(15) Los Angeles, Calif. WILLE MAY WOODRUFF

*Appears in handwriting in pencil on original.

(Perforated bank stamp) 11-2-23.

On reverse:

Rubber stamp endorsement, The Crocker National Bank of San Francisco, Cal.

Rubber stamp endorsement, First National Bank, Lakeview, Oregon.

[Willie Mae Woodruff Exhibit 35]

[Western Union Telegram]

Received at 166 North Center Street, Casper, Wyo.

1922 Sep 21 PM 1 24

DA 181 '13

G Los Angeles Calif 21' 1212P

Mrs Willie May Woodruff
Casper Wyo

Transferred Today Thirty Thousand Dollars to Credit Leonard Woodruff as Requested Your Telegram

First Natl Bank of Los Angeles.

(11)
15,000.
6,000.
11,801.
3,200.
2,600.
800.
900.
3,000.

43,300
530

43,830.

*Figures in italics appear in handwriting on original.

[Willie Mae Woodruff Exhibit 36.]

[Western Union Telegram]

Received at 114 Wall Street, Spokane, Wash.

1922 Sep. 16 PM 2 33

POR262 36 NL
G LosAngeles Calif 16

Leonard Woodruff
P O General Delivery Spokane Wash

Can You Arrange Credit of About Thirty Five Thousand for Your Account as Bank Expect Call From Comptroller Any Day Stop Your Account Over About Thirty Three Thousand Wille May Balance About Twenty Six Thousand Wire Collect

O H Shock

*(11)

*Appears in handwriting on original.

[Willie Mae Woodruff Exhibit 37.]

Memorandum Los Angeles, Cal., Sep. 21, 1922

Debit Willie May Woodruff $30000.00
For transfer & Credit Leonard Woodruff as per telegram from Cody, Wyo. Sept 21/22

Approved:

A. C. May, Junior Vice-President.

(Perforated bank stamp)—Paid 9-21-22.

The First National Bank of Los Angeles

[Willie Mae Woodruff Exhibit 38.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
and the Los Angeles Trust & Savings Bank.

Los Angeles

Bond Department

First National Bank Office.

February 24, 1922.

Mrs. Willie May Woodruff, 2620 So. Mariposa St., Los Angeles, Cal.

Dear Madam: We beg to advise you that the following securities are now ready for delivery:

$14,000 par value Chicago, Burlington & Quincy Railroad Co., First and Refunding Mortgage 5's, due 2/1/71.

If you will kindly present your receipt at window #40, First National Bank, we shall be pleased to deliver the same to you.

Trusting to be of service to you in the future and thanking you for past favors, we are

Yours very truly,

FIRST SECURITIES COMPANY,
By W. A. PIKE.

*Paid & Delivered March 4th
(9)

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 39.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 2nd 1920

Pay to the Order of First Securities Co. $4875.97
Forty eight hundred seventy five 97/100 Dollars

No. 39 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 10-4-20.

On reverse—Rubber stamp endorsement, First Securities Company.

The First National Bank of Los Angeles [16-3]

Los Angeles, Feb. 24th, 1921

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

No. 8 d WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 2-24-21.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, June 10th 1921

Pay to the Order of Leonard Woodruff $200.00
Two Hundred 00/100 ..... Dollars

No. 8 e WILLE MAY WOODRUFF

Rubber stamp—Received Through Los Angeles Clearing House Jun. 11, 1921. F.N.B. of L.A.

(Perforated bank stamp)—Paid 6-11-21.

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp endorsement, Citizens Trust & Savings Bk.

The First National Bank of Los Angeles [16-3]

Los Angeles, June 17th 1921

Pay to the Order of Leonard Woodruff $2500.00
Twenty Five Hundred 00/100 ..... Dollars

No. 8 f WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-15-21.

On reverse—Endorsed in ink by Leonard Woodruff.

Los Angeles, Cal. July 27th 1921 No.....

Western Avenue Branch
Citizens Trust and Savings Bank 16-14

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

8 g WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 7-27-21 16-14.

On reverse—Endorsed in ink by Leonard Woodruff.

Los Angeles, Cal. Sept. 3, 1921 No.....

Western Avenue Branch
Citizens Trust and Savings Bank 16-14

Pay to the Order of Leonard Woodruff $300.00
Three Hundred 00/100 ..... Dollars

8 h WILLIE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-3-21 16-14.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

ck (Illegible initials).

Los Angeles, Oct. 10th 1921

Pay to the Order of Leonard Woodruff $16,587.50
Sixteen Thousand Five Hundred Eighty Seven 50/100 Dollars

8 j WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-13-22.

On reverse—Endorsed in ink by Leonard Woodruff.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 2, 1922

Pay to the Order of Leonard Woodruff $5,000.00
Five Thousand 00/100 ..... Dollars

No. 10 WILLE MAY WOODRUFF

Rubber stamp—Clearing house.

(Perforated bank stamp)—Paid 12-9-22.

18-6

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp endorsements: The Federal Reserve Bank of Kansas City; Federal Reserve Bank of San Francisco, Los Angeles Branch; American National Bank, Ardmore, Oklahoma.

The First National Bank of Los Angeles [16-3]

Los Angeles, Dec. 11th 1922

Pay to the Order of Leonard Woodruff $10,750.00
Ten Thousand Seven Hundred and Fifty 00/100 Dollars

No. 10 a WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 12-19-22.

On reverse:

Endorsed in ink by Leonard Woodruff.

Rubber stamp bank endorsements: Exchange National Bank, Tulsa, Oklahoma; American National Bank, Ardmore, Okla.; (Illegible stamp) Clearing House.

The First National Bank of Los Angeles [16-3]

Los Angeles, May 31*th* 1924

Pay to the Order of Leonard Woodruff $1,000.00
One thousand 00/100 ..... Dollars

No. 17 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-31-24.
On reverse—Endorsed in ink by Leonard Woodruff.

[Willie Mae Woodruff Exhibit 40.]

No.....

(100) Los Angeles, May 20, 1931

Pay to the Order of Banks, Huntley & Co. $15,000.00
Fifteen Thousand 00/100 ..... Dollars

First National Office
Security-First National
Bank of Los Angeles 16-4/12
Seventh & Spring Los Angeles
23

WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB—LA 5-21-31.

On reverse:

Rubber stamp endorsements: Banks Huntley & Co.; Bank of America National Trust & Savings Association.

[Willie Mae Woodruff Exhibit 41.]

First National Bank Los Angeles, Cal.

Memorandum Los Angeles, Cal., Oct. 14 1921

Debit Willie May Woodruff $50,366.67

Fifty thousand three hundred sixty six & 67/100 Dollars

For 50000 State of Arizona Tax Anticipation Bonds.

W. T. S. HAMMOND, Cashier

(Illegible initials)

(Perforated bank stamp)—Paid 10-14-21.

[Willie Mae Woodruff Exhibit 42.]

Bond Department

First Securities Company

Los Angeles, August 1, 1922

Leonard Woodruff

.....

.....

Sold by Mr. Schock

Description	@		Total
Bot from			
$50,000 par value Arizona Tax Anticipation, 6% Gold Bonds, due 9/15/22	100.0149	$50,007.45	
Accrued Interest 3/15 to 8/1		1,133.33	
Bond Nos. 316/65			$51,140.78
Sold To			
20 bonds, (2500 guilders) Kingdom of Netherlands, 6% Gold Bonds, due 3/1/72	960	19,200.00	
Accrued Interest 7/25 to 8/1		19.20	19,219.20
Bond Nos. o 14297/316			
Balance due you check herewith			$31,921.58

Paid Aug. 1, 1922. First Securities Company Bond Department.

Received Above Described Securities—Due Bill EM No. .....

[Willie Mae Woodruff Exhibit 43.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 18th, 1921

Pay to the Order of The First National Bank of Los Angeles $14,353.12

Fourteen Thousand Three Hundred Fifty Three 12/100 ..... Dollars

No..... WILLE MAY WOODRUFF *C

On reverse appear the words in pencil "maybe bonds."

(Perforated bank stamp)—Paid 5-19-21.

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 44.]

The First National Bank of Los Angeles

Bond Department No. 280

Dated 5/18/21

Received from Willie May Woodruff, 262 So. Mariposa
Name Address

$ Fourteen Thousand Three Hundred Fifty Eight 55/100 ..... Dollars

Being Payment for $ Fifteen thousand Par Value Northern Pac. Great Northern Joint 15 yr. 6½ Conv. Bonds @ 96½ less accrued interest from 5/18/21 to 7/1/2. due 7/1/36. Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
The First National Bank
of Los Angeles.
By O. H. Schock

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 45]

Bond Department
The First National Bank of Los Angeles
Seventh and Spring Streets

Los Angeles, Cal., May 18, 1921.

Sold To
Willie Mae Woodruff,
262 S. Mariposa Street,
Los Angeles, California. Sold by Mr. O. H. Schock.

Description	@	Total
$15,000.00 par value. Northern Pacific-Great Northern Joint 15-yr., 6½%, Conv. Gold Bonds, due 7/1/36, (C.B. & Q. Collateral)	96½	$14,475.00
Less 6½% accrued interest from 5/18 to 7/1		116.45 $14,358.55

Denomination Numbers
@ $ 500
@ $1000

Due & Collected
Jan. 1st 1922

Paid (date illegible), The First National Bank of Los Angeles Bond Department. By C. D. Jones.

Matter in italics appears in handwriting on original.

[Willie Mae Woodruff Exhibit 46.]

Memorandum Los Angeles, Cal., 12/14/21

Debit Willie May Woodruff.....$9709.69
For 10 M County of Eastland Texas 5½% Bonds due 1952 @ 96.44 Acc Int to 12 14/21. Charged as per inst. from Mr. Leonard Woodruff 12/14/21.

W. T. S. Hammond, Cashier
JHD. By (signature illegible)
(Perforated bank stamp)—12-15-21.

On reverse written in pencil "*Bonds*".

First National Bank, Los Angeles, California

[Willie Mae Woodruff Exhibit 46-a.]

No. 666

The First National Bank of Los Angeles

Bond Department

Dated 12/14/21

Received from Mrs. Willie May Woodruff, 262 So. Mariposa
$ Ninety seven hundred nine 69/100.....Dollars
Being Payment for $ Ten thousand Par Value
County of Eastland, Texas, 5½% Bonds due 1952.
@ 96.44 and accrued interest to 12/14/21.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
Hold Securities First Securities Company
Forward Due Bill By O. H. Shock
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 46-b.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
December
Ninth
1921

Government, Municipal
and
Corporation Bonds
Members Los Angeles
Stock Exchange

Leonard Woodruff, Esq.,
4624 So. Figueroa St.,
Los Angeles, Cal.

My dear Mr. Woodruff:—

I am holding for you

$10,000 County of Eastland Texas
Serial 5½% Highway Bonds, Series E,
Due 1948,
On a 5.75% basis,

in the expectation that you will want to trade something else that you have that is taxable for them. Although of course

there is no obligation on your part to take them, I believe that you ought to have this block.

The price on the 1948 maturities is 96.64 and interest.

Yours sincerely,

J. W. DUNHAM,
Sales Manager.

JWD/Mc

[Willie Mae Woodruff Exhibit 47.]

The First National Bank of Los Angeles [16-3]

Los Angeles, March 18th, 1921

Pay to the Order of Drake, Riley & Thomas, $15,000.00
Fifteen Thousand and 00/100.....Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-18-21.

On reverse written in pencil "Bonds"

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 47-a.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
March
Twenty Second
1921

Government, Municipal
and
Corporation Bonds
Members Los Angeles
Stock Exchange

Leonard Woodruff, Esq.,
4624 South Figueroa,
Los Angeles, California.

My dear Mr. Woodruff—

Enclosed find statement of your account with us to date, which shows a balance due you of $734.84, which I presume you want left with us as a credit balance, but if you prefer I will be very glad to send you a check.

Yours sincerely,

JWD:FS J. W. DUNHAM.

[Willie Mae Woodruff Exhibit 47-b.]

Sold To
Leonard Woodruff, Esq.,
4624 So. Figueroa St.,
Los Angeles, Cal.

Drake, Riley & Thomas
Government, Municipal and
Corporation Bonds
210 West Seventh Street
Van Nuys Building
Los Angeles, March 22, 1921

Feb.	25	300 shs. Missouri *Kanses* & Texas Stock √	$ 787.50	
Mar.	9	$4000 State of San Paulo 8's √	3,960.44	
	10	200 shs. Sears Roebuck & Co. Stock √	15,345.00	
	11	300 shs. Cuban American Sugar Co. Stock √	7,830.00	
	11	300 shs. General Motors Co. Stock √	3,855.00	
	11	100 shs. Sears Roebuck & Co. Stock √	7,372.50	
	12	200 shs. Sears Roebuck & Co. Stock √	14,645.00	
				$53,795.44

Credits:

Mar.	9	By Cash	$ 787.50	
	9	$4000 Southern Cal. Edison Co. 5's	3,397.78	*sold
	11	By Cash	15,345.00	
	15	By Cash	20,000.00	
	18	By Cash	15,000.00	
				$54,530.28
		Balance Due You	$ 734.84	

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 48.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 17th, 1921

Pay to the Order of Drake, Riley & Thomas $10,198.92
Ten Thousand One Hundred Ninety-Eight 92/100.....Dollars

No..... WILLE MAY WOODRUFF.

On reverse written in pencil "Bonds"

Rubber stamp endorsement Drake, Riley and Thomas

[Willie Mae Woodruff Exhibit 48-a.]

Los Angeles, Cal., 5/17 1921

Received of Wille May Woodruff

The Securities Listed Below

Number Shares or Par Value of Bonds	Security	Certificate or Bond Number	In Name of	Remarks
Check $10,198.92 on a/c to balance to date				
Checks on Exch Natl Bank of Tulsa—				
	#123572—			$4808.16
	√120486			544.23
	121550			636.28
	122518			3524.45
				9513.12
	Pierce Oil Corpn A 914		$349.75	
	B ford		9513.12	
(36)			$9862.87	

DRAKE, RILEY & THOMAS
By J. W. DUNHAM

over

This is a deposit to my credit on this date May 17th, 1921

*Word in italics in handwriting on original.

with Drake, Riley & Thomas. All other bonds & stocks being previously paid for in full.

Kelly Springfields

(15,000 paid for
(15,000 U. S. Brazil paid for
(not delivered

Delivered June 17th, 1921

(30)

[Willie Mae Woodruff Exhibit 49]

The First National Bank of Los Angeles [16-3]

Los Angeles, Oct. 31st, 1921

Pay to the Order of The First National Bank of Los Angeles $26,000.00

Twenty Six Thousand 00/100.....Dollars

No..... WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 10-31-21

On reverse written in pencil is the endorsement of W. C. Bryan.

[Willie Mae Woodruff Exhibit 49-a.]

No. 466

The First National Bank of Los Angeles

Bond Department

Willie May Woodruff Dated 10/31/21

Received from Leonard Woodruff, 262 So. Mariposa
Name Address

$ Twenty six thousand.....Dollars

Being payment for $ Twenty five thousand Par Value State of Ariz. 6% Bonds due 9/15/22 @100.25 and accrued

interest to 10/31/21. Surplus to be credited back to same a/c with 1st Nat. Bk., L.A.

Delivery of the above described securities, or a due bill therefor. Will be made in accordance with instructions below.

Bond Department
First Securities Company.
By.....

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 49-b.]

The First National Bank of Los Angeles

In Account With

Willie May Woodruff
262 So. Mariposa Ave.
October 31, 1921

$25,000 State of Ariz. Tax Anticipation Bonds	@100.25	25,062.50	
Accrued Int. 1 mo. 15 days	@ 6%	187.50	
			25,250.00

25 @ $1,000 Nos. 401/425 inc.

[Willie Mae Woodruff Exhibit 50.]

Drake, Riley & Thomas

Established 1912
Cable Address
Perdraley
Los Angeles

210 West Seventh St.
Los Angeles, Cal.
May
Twenty-fourth
1921

Government, Municipal and Corporation Bonds
Members Los Angeles Stock Exchange

Leonard Woodruff, Esq.
262 S. Mariposa,
Los Angeles, California.

My dear Mr. Woodruff—

We take pleasure in confirming sale to you, when, as and if issued, for the account of Wille May Woodruff, of—

$10,000 Government of the French Republic
20-year External 7½% Bonds
Due June 1, 1941
@ 95½ and interest

We enclose herewith statement of the transaction and an Interim Certificate covering this purchase so that your funds will be drawing interest at the coupon rate.

Yours sincerely,

JWD:FS J. W. DUNHAM.

[Willie Mae Woodruff Exhibit 51.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 7th 1921

Pay to the Order of Drake Riley & Thomas - $12,745.00
Twelve Thousand Seven Hundred Forty Five 00/100 Dollars

No..... WILLE MAY WOODRUFF

(Perforated bank stamp)—7-(illegible)-21.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas."

[Willie Mae Woodruff Exhibit 51-a.]

Bond Department

The First National Bank of Los Angeles

Seventh and Spring Streets

Los Angeles, Cal., April 25, 1921.

Sold To

Willie May Woodruff 262 So. Mariposa St., Los Angeles, Calif. Sold by Mr. O. H. Schock

Description	@	Total
$3000 Par Value Turlock Irrigation District 6% Gold Bonds, due 7/1/51	100	3000.00
6% Accrued Interest From 1/1 to 4/25		57.00
		$3057.00

Denomination	Numbers
@ $500	
3 @ $1000	Perm. 2278 80

Paid Apr. 26, 1921. The First National Bank of Los Angeles Bond Department. By C. D. Jones.

[Willie Mae Woodruff Exhibit 52.]

The First National Bank of Los Angeles

Bond Department

No. 217

Dated 4/25/21

Received From Willie May Woodruff (Name) 262 So Mariposa (Address)

$ Three thousand fifty seven and 20/100 ..... Dollars

Being Payment for $ Three thousand ..... Par Value Turlock Irrigation Dist. Serial 6% Bonds @ par and accrued interest to 4/25/21 due 7/1/51

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

BOND DEPARTMENT
THE FIRST NATIONAL BANK OF LOS ANGELES
By O. H. SCHOCK.

[Willie Mae Woodruff Exhibit 53.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 6th 1921

Pay to the Order of The First National Bank of Los Angeles *M $15109.38

Fifteen Thousand One Hundred Nine 38/100 Dollars

*M

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-7-21.

*Appears in handwriting in red ink on original.

[Willie Mae Woodruff Exhibit 54.]

The First National Bank of Los Angeles [16-3]

Los Angeles, March 30th 1921

Pay to the Order of The First National Bank of Los Angeles $5000.00

Five Thousand 00/100 ..... Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 3-31-21.

[Willie Mae Woodruff Exhibit 55.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 29th 1921

Pay to the Order of The First National Bank of Los Angeles $25,000.00

Twenty Five Thousand 00/100 ..... Dollars

No.....

WILLE MAY WOODRUFF

(Perforated bank stamp)—8-8-21.

[Willie Mae Woodruff Exhibit 56.]

Bond Department

First Securities Company

Los Angeles, March 4, 1922

Sold To

Willie Maye Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description	@		Total
$5,000 pv. Kingdom of Netherlands, 50-Yr. 6% Sinking Fund Gold Bonds Due 3/1/72	94	$4,700.00	
6% Accrued Interest from 3/1 to 3/3		1.67	
			$4,701.67

*Sold

Paid Mar. 4, 1922. First Securities Company Bond Department. By (Illegible signature),

*Appears in handwriting in ink on original.

[Willie Mae Woodruff Exhibit 57.]

Debit Date 6/19/22

Wille May Woodruff

10,000 Venice Union H.S. Dist. 5—1934 @ 103.66 less 1%	10266	
10,000 Venice Union H.S. Dist.		$20651.67 Total Charge (Total must be entered above in all cases)
1—1942 @ 105.19 less 1%	10419	
Less Int. to 7/1 Dis.	33.33	

(Illegible initials) Approved:

B. M. ELLIOTT, Assistant Cashier.

The First National Bank of Los Angeles

(Perforated bank stamp)—Paid 6-20-22.

On reverse, in pencil: "Bonds".

[Willie Mae Woodruff Exhibit 57-a.]

First Securities Company

Bond Department

No. 1200

Dated 6/19/22

Received from Wille May Woodruff
Name Address

$ Twenty thousand six hundred fifty one 67/100 Dollars being payment for $ Twenty thousand ..... par value

Venice Union High School Dist 5% Bonds

10,000 due 1934 @ 102.66
@ .... and accrued interest to 6/19/22 10,000 " 1942 @ 104.19

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured.

BOND DEPARTMENT
FIRST SECURITIES COMPANY
By O. H. SCHOCK.

[Willie Mae Woodruff Exhibit 57-b.]

Bond Department

First Securities Company

Los Angeles, June 20, 1922

Sold To

Willie Mae Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description		Total
$10,000 pv. Venice Union High School District. Due 7/1/34	103.66 $10,366.00	
$10,000 pv. Venice Union High School District. Due 7/1/42	105.19 $10,519.00	
	$20,885.00	
Discount 5% Accrued Interest from 6/19 to 7/1	33.33	
	$20,851.67	
Less 1%	200.00	
Interim Certificate No. 2991		$20,651.67

Paid June 20, 1922. First Securities Company Bond Department. By (Illegible signature).

Received Above Described Securities—Due Bill MP

No. .....

[Willie Mae Woodruff Exhibit 57-c.]

Bond Department

First Securities Company

Los Angeles, June 20, 1922

Sold To

Willie Mae Woodruff, 262 So. Mariposa Ave., Los Angeles, Cal.

Sold by Mr. Schock

Description	@	Total
$10,000 pv. Venice Union High School District. Due 7/1/34	103.66	$10,366.00
$10,000 pv. Venice Union High School District. Due 7/1/42	105.19	$10,519.00
		$20,885.00
Discount 5% Accrued Interest from 6/19 to 7/1		33.33
		$20,851.67
Less 1%		200.00
Interim Certificate No. 2991		$20,651.67

Received Above Described Securities—Due Bill MP

No. .....

[Willie Mae Woodruff Exhibit 58.]

The First National Bank of Los Angeles

Los Angeles, 3 3 22

Memorandum

Debit Willie May Woodruff.....$4701.67

For 5/2500 Guilder Bonds of the Kingdom of the Netherlands 50 yr. 67. S. F. Bonds due 1972 @ 940 per Bond charged as per inst. 2/3/22.

Approved:

JHS W. C. BRYAN.

On reverse: Written in pencil "$4701.67 Guilder Kingdom of Netherlands Bonds"

(Perforated bank stamp)—Paid 3-3-22.

[Willie Mae Woodruff Exhibit 58-a.]

No. 914

First Securities Company

Bond Department

Dated 3/3/22

Received from Mrs. Willie May Woodruff
Name Address

$ Forty seven hundred one and 67/100.....Dollars

Being payment for 5/2500 Guilder Par Value

Bonds of the Kingdom of the Netherlands 50 yr. 6% S. F.

Bonds @ 940 and accrued interest to 3/3/22 due 1972.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
Hold Securities First Securities Company
Forward Due Bill By O. H. Shock.
Forward Securities R/M Insured.

[Willie Mae Woodruff Exhibit 59.]

Sell

*375
20

7500

Branch

First Securities Company
Bond Department

Number

Posted to

Security
Customer
Recap.
Salesman

Billed

Please Buy for my account and risk
Good until.....

Date 7/28/22
% No.

Cost

/B Salesman O. H. Shock

No.	Denom.	Description	Maturity	Numbers	Price	Amount	Total
		20 Shares 1st Nat Bk L.A. Beneficial Ctfs.			375 Net		

register in name of
Wille May Woodruff
Charge to her a/c with 1st Nat Bk L.A.

Payment and Delivery Instructions

.....

.....

Above Securities received
First Securities Company
By.....

Name √ Leonard Woodruff
Address . For Wille May Woodruff

.....

Telephone .....

*Figures in italics appear in handwriting on the original.

[Willie Mae Woodruff Exhibit 60—5 Checks.]

Los Angeles, 12/29/24 No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Leonard Woodruff $14,181.66
Fourteen thousand one hundred eighty-one 66/100 Dollars

WILLIE MAY WOODRUFF.

(Perforated bank stamp)—F N B L A 1-6-25.

On reverse appears the endorsement in ink of Leonard Woodruff; also the words in pencil, "I owe you this. L. W."

The First National Bank of Los Angeles [16-3]

Los Angeles, July 27th, 1925

Pay to the Order of Leonard Woodruff $18,000.00
Eighteen Thousand 00/100.....Dollars

No.—— WILLIE MAY WOODRUFF

(Perforated bank stamp)—7-27-25.

On reverse appears the endorsement in ink of Leonard Woodruff; also written in pencil the words "I owe you this. L. J. W."

Los Angeles, April 12th, 1926. No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Leonard Woodruff $5000.00
Five thousand 00/100.....Dollars

WILLIE MAY WOODRUFF.

(Perforated bank stamp)—Paid 4-13-26.

On reverse appears the endorsement in ink of Leonard Woodruff; rubber stamp endorsements of Federal Reserve Bank of Kansas City; Los Angeles Branch of Federal Reserve Bank of San Francisco; American National Bank of Ardmore, Oklahoma; New England National Bank & Trust Co.,

Kansas City, Mo. Also the words written in pencil, "I owe you this on oil well. L. J. W."

The First National Bank of Los Angeles [16-3]

Los Angeles, Nov. 12, '26

Pay to the Order of Leonard Woodruff $6000.00
Six thousand .....Dollars

No.—— WILLE MAY WOODRUFF

(Perforated bank stamp)—11-12-26.

On reverse appears the endorsement of Leonard Woodruff in ink: also written in pencil are the words, "I owe you this on oil well. L.J.W."

Los Angeles, Dec. 3, 1926. No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Jack Tomas $600.00
Six hundred 00/100.....Dollars

WILLE MAY WOODRUFF

(Perforated bank stamp)—F N B L A, 12-4-26.

On reverse—Rubber stamp endorsements, endorsement in ink of Jack Thomas; in ink "OK, R. S. (name illegible):" also written in pencil the words "for labor on my Oregon ranch. I owe W. M. W. this $600. L.J.W. 755.52."

[Willie Mae Woodruff Exhibit 61.]

The First National Bank
Of Los Angeles

Los Angeles 5/18/22

Memorandum

Debit Willie May Woodruff.....$40136.55
For 40 M N.S.A. 4th 4 4¼'s--1938 @ 99.94. Charged in acc and with int. to Mr. Shock.

Approved:
OHS L. E. JACOBUS,
Assistant Cashier.

(Perforated bank stamp)--Paid 5-19-22.

On reverse, written in pencil, appears the following: "Liberty Bond bought by W.M.W. for her 3 children and self in equal amounts. L. J. W. sold & spent the money. L.J.W." Also written in pencil the word "Bonds."

[Willie Mae Woodruff Exhibit 61-a.]

First Securities Company

Bond Department

Sold To Los Angeles, 5/19/22

Willie May Woodruff

Denomination 50 100 500 1000	Par	Issue		Price	Principal	Int.	Total	Memorandum
		First	3½ J & D					
		First	4 J & D					
		First	4¼ J & D					
		Second	4 M & N					
		Second	4¼ M & N					
		Third	4¼ M & S					
	40,000	Fourth	4¼ A & O	99 94	399 76—	160 55	40 136 55	
		Victory	4¾ J & D					
		Coupons						
		TOTAL					40,136.55	

Above Securities Received

[Willie Mae Woodruff Exhibit 61-b.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
—and—
Los Angeles Trust & Savings Bank

Los Angeles

Bond Department

First National Bank Office

May 18, 1922

Mrs. Willie May Woodruff,
262 So. Mariposa Ave.,
Los Angeles, Calif.

Dear Mrs. Woodruff:

Confirming my telephone conversation of today with Mr. Woodruff, I have sold you:

$40,000 U. S. A. Fourth 4¼% Liberty Loan Bonds of 1938 at 99.94,

and in accordance with his instructions, I am today charging your account with the First National Bank of Los Angeles $40,136.55 being payment in full for the above as per detailed statement enclosed herewith.

At your convenience, I shall be pleased to have you or Mr. Woodruff call to accept delivery of the above bonds.

Very truly yours,

First Securities Company,
By O. H. Shock.

[Willie Mae Woodruff Exhibit 62.]

Los Angeles, 4/12, 1923 No.——

The First National Bank of Los Angeles [16-3]

Pay to the Order of Drake, Riley & Thomas $8984.64
Eight Thousand Eighty four and 64/100.....Dollars

48 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 4-13-23.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 62-a.]

Drake, Riley & Thomas

Established 1912
San Francisco
315 Montgomery Street
Pasadena
16 South Raymond Ave.
Santa Barbara
1018 State Street

210 West Seventh Street
Los Angeles, Cal.
Government, Municipal and Corporation Bonds
Member Los Angeles Stock Exchange
Cable Address Perdraley
Los Angeles

Sold To

Willie May Woodruff
Los Angeles, Cal.

April 12, 1923

$15,000 Pacific Gas & Electric Corp
1st & Ref. 5½'s

Price: 98 $14,700.00

Interest: J&D 1st. Accrued
4 mo. 11 da. 300.30 $15,000.30

Maturity: December 1, 1953

Nos:

Paid by credit on books of $6015.66
and check for 8984.64 from Mrs. Woodruff

[Willie Mae Woodruff Exhibit 62-b.]

a/c Mrs. Wille May Woodruff

Thes bonds belong to Wille May Woodruff

15,000 Pac. Gas & Electric

Signed LEONARD WOODRUFF.

(28)

[Willie Mae Woodruff Exhibit 63.]

The First National Bank of Los Angeles [16-3]

Los Angeles,.....192....

Pay to the Order of First National Bank $64,000.00
Sixty-Four Thousand 00/100.....Dollars

No.—— WILLE MAY WOODRUFF.

(Perforated bank stamp)—Paid 3-4-22.

Mrs.Willie Mae Woodruff,Exhibit #64

BANK OF GLENDALE

GLENDALE, CALIFORNIA

DEPOSITED BY

192

PLEASE LIST EACH CHECK SEPARATELY

	DOLLARS	CENTS
GOLD		
SILVER		
CURRENCY		
CHECKS		
"		
"		
"		
"		
"		
"		
"		
"		
TOTAL $		

Received the proceeds
of Coupons detached
from Bonds owned by
Willie Mae Woodruff
as follows:
Clerk's Office Superior Court
Los Angeles County, California
Filed Jan 20 1941
W. M. Woodruff Deputy

SEE THAT ALL CHECKS AND DRAFTS ARE ENDORSED

Mrs.Willie Mae Woodruff,Exhibit #64

$15,000 Kelly Springfield Tire Co 8% Bonds 1931 (Temporary)

Matched envelope with Mrs Woodruff's name

Registered in name Willie Mae Woodruff

5000 Canadian Northern Ry
10,000 25 year 6½s - 7/1/1946
Delivered (Temporary)
L.W.

15000 French-8s 1946
Delivered
L.W.

300 Shares Sears Roebuck
Delivered L.W.

[Willie Mae Woodruff Exhibit 65.]

First Securities Company

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Los Angeles

The First National Bank Office, Los Angeles

February 9, 1925

Mrs. Wille May Woodruff, 262 S. Mariposa, Los Angeles, Calif.

Dear Mrs. Woodruff: Enclosed is a statement covering the sale of your $10,000 L. A. Gas & Electric Corp. 6% bonds of 1942 and purchase of $10,000 Pacific Steamship 6½s, showing a balance due you of $655.14 which we have today credited to your checking account with the First National Bank as per duplicate deposit tag attached.

Yours very truly,

O. H. Schock

The information and statistics contained in this letter are taken from sources which we consider reliable and, while given in good faith, are not guaranteed by us.

[Willie Mae Woodruff Exhibit 65-a.]

Deposited With

The First National Bank of Los Angeles

Commercial Deposit

2/9 1925

In making this deposit and at all times in doing business with this bank the depositor specifically agrees to all of the terms and conditions printed on the reverse side hereof

Wille May Woodruff
Depositor

By Bond Agency

Please list local checks by number of drawee bank, out of town items by number or name of city.

	Dollars	Cents
Currency		
Coin		
Checks		
	16-54	655 14

Duplicate of original deposit ticket containing ..... items. $655.14. (Illegible signature), Teller.

Total

[On reverse.]

In receiving items for deposit, credit or collection, this Bank assumes no responsibility for the loss of items in transit, or for acts or omissions of any of its collecting agents, who may be the bank or party upon whom drawn, or otherwise, as this Bank may determine, and this Bank shall only be liable for the proceeds in money or solvent credits which ultimately come into its possession. Under these conditions items on this Bank or any other bank or party, previously credited, may be charged back to the depositor's account.

Whenever the pass book or statement of account of the depositor is written up by this Bank and returned with the checks and other vouchers, the depositor shall within ten days after receipt thereof make such examination of same as will satisfy the depositor of their correctness and genuineness, both as to face and endorsements, and a failure by the depositor to report in writing anything to the contrary within ten days after such receipt, shall cause said account to become an account stated, and after said ten days shall have elapsed without objection to this Bank, the depositor shall have no right to question the correctness or genuineness of the said pass book, account, vouchers or checks, or the endorsements thereon.

[Willie Mae Woodruff Exhibit 65-b.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., Feb. 7, 1925.

To Wille May Woodruff,

Address 262 So. Mariposa Ave., Los Angeles, California.

Salesman Schock

Par Value	Description and Bond Nnmbers	Date Next Coupon Attached	Price	Amount	Total
Bot. From					
$10,000 pv.	Los Angeles Gas & Electric Corp., Series "H", Gen. & Ref. Mtg., 6% Gold Bonds, Nos. M4661/70, Due 3/1/42		102¼	10,225.00	
	Accrued Int. 9/1—2/6			258.33	
					$10,483.33
Sold To					
$10,000 pv.	Pacific Steamship Company, 1st Pfd. Marine Equipment Mtg., 6½%, Serial Gold Bonds Due Bill #6466, Due 1/1/40		97.65	9,765.00	
	Accrued Int. 1/1—2/6			63.19	
					9,828.19
	Balance credited to your checking acct., First National Bank, Los Angeles				$ 655.14

EC

[Willie Mae Woodruff Exhibit 65-c.]

Duplicate Invoice
Security-First Company
Identical in Ownership With Security-First National Bank of Los Angeles

Los Angeles, Calif., Feb. 7, 1925

To Wille May Woodruff,
Address 262 So. Mariposa Ave., Los Angeles, California
Representative Schock

Par Value Or No. Shares	Description and Security Numbers	Date Next Coupon Attached	Price	Amount	Total
Bot. From					
$10,000 pv.	Los Angeles Gas & Electric Corp., Series "H", Gen. & Ref. Mtg., 6% Gold Bonds, Nos. M4661/70, Due 3/1/42		102¼	10,225.00	
	Accrued Int. 9/1—2/6			258.33	
					$10,483.33
Sold To					
$10,000 pv.	Pacific Steamship Company, 1st Pfd. Marine Equipment Mtg., 6½%, Serial Gold Bonds Due Bill #6466, Due 1/1/40		97.65	9,765.00	
	Accrued Int. 1/1—2/6			63.19	
					9,828.19
	Balance credited to your checking acct., First National Bank, Los Angeles				$ 655.14

EC

[Willie Mae Woodruff Exhibit 65-d.]

Securities Company

Identical in Ownership With

ational
s Angeles

Pacific-Southwest
Trust & Savings Bank

March 16, 1925.

Mrs. Wille May Woodruff, 262 S. Mariposa, Los Angeles, Cal.

*10°

Dear Madam: We are advised that the permanent

Pacific Steamship Company 6½s due serially

are ready for delivery.

If you will deposit your temporary certificates for the above with us, we will be pleased to forward them for exchange and deliver to you the permanent securities when received by us.

Yours very truly,

O. H. Schock

**10 000 Pacific Steamship Co Bond in reorganization of new Co these bonds were sold to the new co for $25 00 Darnell was to place this money to bolster up a short stock account. He put it in his pocket iastead & caused the selling of 12 000 shares of New York stock at a very low price—*

I owe W.M.W. this $25 00 in cash & untold amount of considerable more for at least half of the lost on these stocks. app $20 a share or on 600 shares $12 000 in all. L.J.W.

*Words and figures in italics appear in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 66.]

First Securities Company

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Los Angeles

The First National Bank Office, Los Angeles

February 5, 1925

Mr. Leonard Woodruff,
262 S, Mariposa,
Los Angeles, Calif.

Dear Mr. Woodruff:

Attached hereto is my receipt No. 4065 showing $5161.94 received from Wille May Woodruff for $5000 Pacific Dock & Terminal, First 6½s of 1929.

There is also attached duplicate deposit tag for $300 which represents matured coupons of September 1, 1924 which were attached to the $10,000 L. A. Gas & Electric 6s of 1942 which I took today in payment for $10,000 Pacific Steamship 6½s of 1940.

Yours very truly,

O. H. SCHOCK

The information and statistics contained in this letter are taken from sources which we consider reliable and, while given in good faith, are not guaranteed by us.

[Willie Mae Woodruff Exhibit 66-a.]

First Securities Company. No. 4065

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank

Bond Department

Dated 2/5/25

Received from Willie May Woodruff
Name Address

$ Fifty one hundred sixty-one 94/100.....Dollars
being payment for Five thousand.....par value

Pac Dock & Term Co. 1st Mtg. 6½ due 1929 at 101 and accrued interest to 2/5/25.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Prin.	5050
Int.	111.94
	5151.94

Bond Department
First Securities Company
By O. H. Schock.

Hold Securities

Forward Due Bill

Forward Securities R/M Insured

[Willie Mae Woodruff Exhibit 66-b.]

First Securities Company

Bond Department

Branch Date Ordered 2/5/25

Name Wille May Woodruff

Address 262 So. Mariposa Ave.

Telephone

Good Until Salesman O. H. Schock

Purchase Order Number
Regular or Market
Set Up Price
Entered
Sales Dept. Record
Billed by Date
Entered
Security Ledger
Sales
Recap.
Accounts Receivable
Security Ledger No.
Cost

Quan. Denom.	Description	Mat.	Numbers	Price	Amount	Total
10/1060	L. A. Gas & Elec Co	42	4661/70			

Payment and Delivery Instructions
Trade for Pac Steamship Co. 6½
Above securities received by: O. H. Schock

Please Sell the Above Securities for My Account and Risk
Client's Signature

[Willie Mae Woodruff Exhibit 66-c.]

First Securities Company

Owned by the Stockholders of
The First National Bank of Los Angeles
——and the——
Los Angeles Trust & Savings Bank

Bond Department

Los Angeles
April 7, 1925

Mr. Leonard Woodruff,
262 S. Mariposa,
Los Angeles, Calif.

Dear Sir:

At your convenience kindly call and take delivery of the permanent

Pacific Steamship Co. 6½, 1940

exchanged for your temporary certificates recently deposited with us.

Kindly bring our receipt for surrender.

Yours very truly,

O. H. SCHOCK

[Willie Mae Woodruff Exhibit 67.]

The First National Bank of Los Angeles [16-3]

Los Angeles, 2/28/24

Pay to the Order of First National Bank, L.A. $18,000.00
Eighteen Thousand and no/100.....Dollars

No. 51 WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 3-1-24

[Willie Mae Woodruff Exhibit 68.]

The First National Bank of Los Angeles [16-3]

Los Angeles 11/26 24

Pay to the Order of First National Bank $9415.66
Ninety four hundred fifteen 66/100 Dollars

No. 44 WILLE MAY WOOODRUFF

(Perforated bank stamp)—FNB LA 11-29-24.

On reverse—written in pencil is the following: "Think this is Sears & Roebuck purchase."

[Willie Mae Woodruff Exhibit 69.]

The First National Bank of Los Angeles [16-3]

Los Angeles, May 13th, 1924

Pay to the Order of Drake, Riley & Thomas $8,970.00
Eighty nine hundred and seventy 00/100 Dollars

No. 43 WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 5-13-24.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas. Also the following written in pencil: "Probably 100 shares Sears Roe—purchase—"

[Willie Mae Woodruff Exhibit 69-a.]

Drake, Riley & Thomas

Established 1912
Pasadena
14 North Euclid Ave.
Santa Barbara
1018 State Street
Long Beach
141 West First Street
Riverside
660 Seventh Street

210 West Seventh St.
I. N. Van Nuys Bldg.
Los Angeles, Cal.

Government, Municipal and Corporation Bonds
Members San Francisco Stock Exchange
Members Los Angeles Stock Exchange
Cable Address
Perdraley
Los Angeles

Sold To
Mrs. Willie May Woodruff,
Los Angeles, California.

May 13, 1924.

100 shs. Southern Calif. Edison Co. 6% Pfd. Stock		
Price: 90	$9000.00	
Interest: Dated June 1st less 18 da. Prepy.	30.00	
		$8970.00

Paid May 13, 1924—Drake, Riley & Thomas, Los Angeles, Cal., by JHD.

[Willie Mae Woodruff Exhibit 70.]

Los Angeles, Cal., 4 9 23 No.

The First National Bank of Los Angeles (16-3)

Pay to the Order of First Security Co. $19,888
Nineteen thousand eight hundred eighty # Dollars

45 Willie May Woodruff

(Perforated bank stamp)—Paid 4-11-23.

On reverse:

Rubber stamp endorsement, First Securities Co.

Rubber stamp endorsement, Los Angeles Clearing House and Savings Bank.

*19880
1988
17892

*Appears in handwriting in pencil on reverse of original.

[Willie Mae Woodruff Exhibit 70-a.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., 4-19-23

Date Sold.....
Salesman Schock
Date Delivered.....

To Willie May Woodruff,
Address 262 So. Mariposa,
Los Angeles, Calif.

Par Value	Description and Bond Numbers	Date Last Coupon Attached	Price	Amount	Total
Sold To					
$20,000	pw. Union Oil of California Serial 6% Gold Bond Series B, Due Bill 4221, Due 4/1/26		99¼	19,850.00	
	Accrued Int. 3/1-4/10			30.00	
					$19,880.00

Paid Apr. 19, 1923. First Securities Company Bond Department. By FORNE.

[Willie Mae Woodruff Exhibit 71.]

Los Angeles, June 7-23 No.....

The First National Bank of Los Angeles [16-3]

Pay to the Order of First Securities Co $15500.00
Fifteen thousand five hundred Dollars

47 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-26-23.

On reverse:

Rubber stamp endorsement, First Securities Co.

Rubber stamp endorsement, Los Angeles Clearing House and Savings Bank.

[Willie Mae Woodruff Exhibit 71-a.]

Invoice

First Securities Company

Bond Department

Los Angeles, Cal., 6-25-23

Date Sold.....
Salesman Schock
Date Delivered.....

To Willie May Woodruff,
Address 262 So. Mariposa,
Los Angeles, Calif.

Par Value	Description and Bond Numbers	Date Last Coupon Attached	Price	Amount	Total
Sold To Paid					$15,500.00
$15,000 pv.	City of L. A. Water Works, 4½%, No. M10230/44, Due 12/1/29	12/1/23	100¼	15,037.50	
	Accrued Int. 6/1-6/25			45.00	
					$15,082.50
	Balance Due You. Credit, your Account First National Bank.				$ 417.50

*(Illegible) OK JD

V

*Appear in handwriting in pencil on original.

[Willie Mae Woodruff Exhibit 72.]

The First National Bank of Los Angeles [16-3]

Los Angeles, June 16th, 1922

Pay to the Order of Drake, Riley & Thomas $17,500.00
Seventeen Thousand Five Hundred 00/100.....Dollars

No.——

WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 6-16-22.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas. Also written in pencil was the following: "Rep. France bond bought by W.M.W. sold & spent by L.J.W."

[Willie Mae Woodruff Exhibit 72-a.]

Drake, Riley & Thomas

Statement of Account

Leonard Woodruff,
~~1621 South Figueroa~~
7

Mar 27 1923

Date		Dr.	Credit
1922			
June 16	Cash		17,500.00
15	300 sh Cuban Amer Sugar	7,155.00	
July 7	(6/13) 5 M San J Lt. & Pr. 6/50	5047.50	
7	(6/13) 5 M Union Oil of Calif. 5/31	4861.80	
7	5 M S J Lt & Pr. 6/50		5080.00
7	5 M Union Oil of Calif. 5/31		4753.47
7	6/13 5 M Crane Creek 8 0 6/32	5041.00	
7	" 5 " Sunnyside sp	5041.00	
24	Union Oil Cpns.		125.00
1923			
Mar. 15	400 sh. Cuban Amer. Sugar		14,122.50
15	Stamps " "	1.60	
17	200 sh. General Motors		2955.00
17	Stamps " "	.8	
19	100 sh. Cuban Amer. Sugar		3515.00
19	Stamp " " "	.40	
		27,156.30	48,050.97
			27,156.30
	Cr. Balance		20,894.67

[Willie Mae Woodruff Exhibit 72-b.]

Leonard Woodruff

Regular Account

1922		Dr.	Credit
June 15	Cuban-American Sugar	7,155.00	
6	Cash		17,500.00
7	5M Crane Creek (Idaho) 6s	5,041.00	
7	" Sunnyside (Idaho) 6s	5,041.00	
7	Profit on 5M San Joaquin 6s		32.50
7	" " " Union Oil 5s		17.47
7	To balance	312.97	
		17,549.97	17,549.97
7	Bal. to Credit Mr. Woodruff		312.97

[Willie Mae Woodruff Exhibit 73.]

First National Bank

Los Angeles, Cal.

Los Angeles, Cal., 9 29/21

Memorandum

Debit Willie May Woodruff.....$10,197.87
For 10M L. A. City Patrol Dist. 5½% Bonds 5M due 11/1/22 5M due 11/1/23 in accordance with your inst. & as per our letter of 9/28/21.

W. T. S. Hammond, Cashier
By A. C. Nay, Junior Vice-Pres.

53
OHS.

(Perforated bank stamp)—9-29-21.

On reverse—Written in pencil was the following: "L. A. City Schools Exempt from Taxes. L.W. F. Securities Co. or First Natl. Bk."

[Willie Mae Woodruff Exhibit 74.]

Los Angeles 12/27/24 No.

The First National Bank of Los Angeles (16-3)

Pay to the Order of First Nat. Bk., L.A. .. $4871.67
Forty-eight hundred seventy-one 67/100.....Dollars

x WILLIE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 12-29-24.

On reverse in pencil "Bonds bought in 1924."

[Willie Mae Woodruff Exhibit 74-a.]

First Securities Company No. 4237

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank
Bond Department

Dated 12/27/24

Received from Wille May Woodruff
Name Address

$ Forty-eight hundred seventy-one 67/100.....Dollars
being payment for $ Five thousand.....par value
Central Ariz. L. & P. 6, 1942 at 98 and accrued interest to 12/27/24.

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Hold Securities
Forward Due Bill
Forward Securities R/M Insured

Prin.	4850	
Int.	21.67	Bond Department
		First Securities Company
	4871.61	By O. H. SCHOCK

[Willie Mae Woodruff Exhibit 75]

Los Angeles 11/7.24. No. .....

The First National Bank of Los Angeles [16-3]

Pay to the Order of First National Bank of
Los Angeles $5000.00
Five Thousand no/100 ..... Dollars

WILLE MAY WOODRUFF

(Perforated bank stamp)—FNB LA 11-7-24.

On reverse—Written in pencil is the following: "Payment on First Nat. Bank stock."

[Willie May Woodruff Exhibit 76.]

The First National Bank of Los Angeles [16-3]

Los Angeles, July 8th, 1924

Pay to the Order of First Security $10,326.40
Ten Thousand and Three Hundred Twenty-six 40/100 Dollars

No. 46 WILLE MAY WOODRUFF

On reverse—Rubber stamp endorsement, First Securities Company.

[Willie Mae Woodruff Exhibit 77.]

The First National Bank of Los Angeles [16-3]

Los Angeles, Sept. 20th, 1920

Pay to the Order of Drake, Riley & Thomas $14552.61
Fourteen Thousand Five Hundred and Fifty Two
61/100 ..... Dollars

No. 41 WILLE MAY WOODRUFF

(Perforated bank stamp)—Paid 9-21-20.

On reverse—Rubber stamp endorsement, Drake, Riley & Thomas.

[Willie Mae Woodruff Exhibit 78.]

Debit Date Mch 5, 1923

Willie May Woodruff

For investment $26,500.00

Total Charge
(Total Must Be Entered Above in All Cases)

The First National Bank of Los Angeles

Approved:

L. E. JACOBUS
Asst, Cashier.

(Perforated bank stamp)—Paid 3-5-23.

[Willie Mae Woodruff Exhibit 78-a.]

First Securities Company No. 4238

Identical in Ownership With
The First National Bank of Los Angeles
Pacific-Southwest Trust & Savings Bank
Bond Department

Dated 12/29/24

Received from Wille May Woodruff
Name Address

$ *Forteen* thousand one hundred eighty-one 66/100....Dollars being payment for $ Fifteen thousand.....par value Gov. of the French Rep. 77 Extended Bonds at 94 and accrued interest to 12/29/24

Delivery of the above described securities, or a due bill therefor, will be made in accordance with instructions below:

Bond Department
First Securities Company
By O. H. SCHOCK

Hold Securities
Forward Due Bill
Forward Securities R/M Insured

[Willie Mae Woodruff Exhibit 78-b.]

Debit

Date Feby. 26, 1925

Wille May Woodruff

For investment according to instructions. $15,000.00

Total Charge
(Total Must Be Entered Above in All Cases)

The First National Bank of Los Angeles

Approved:
L. E. JACOBUS
ac
Assistant Cashier.

(Perforated bank stamp)—Paid 2-26-25.

Mrs. Willie Mae Woodruff, Exhibit #79

TAX RATES ON EACH $100 VALUATION AS

COUNTY (INSTITUTIONS & CHARITY)	.57
(RETURN OF SCHOOL INTEREST)	.06
(OTHER SERVICES)	.64 1.27
LOS ANGELES CITY TAX DIST. # 3	1.56
LOS ANGELES CITY SCHOOL	1.31
METROPOLITAN WATER DIST.	.37
COUNTY FLOOD (ON LAND & IMPS)	.29

OFFICE OF H. L. BYRAM, COUNTY TAX COLLECTOR
HALL OF JUSTICE LOS ANGELES, CALIFORNIA.

This bill when properly stamped becomes a receipt for the payment of taxes levied by Los Angeles County on the property described hereon for the fiscal year from July 1, 1936 to June 30, 1937.

1936

AND FOR THE MUNICIPAL TAXES OF LOS ANGELES CITY

No 152976 Vol. 28

No 152976 Vol. 28

ASSESSED TO OR OWNED BY

LEONARD J WOODRUFF
C/O C & J BERQUIST
500 HALL OF RECORDS

LOS ANGELES CAL

SECOND INSTALLMENT DUE JANUARY 30, 1937 RECEIPT HERE

FIRST INSTALLMENT DUE NOVEMBER 1, 1936 RECEIPT HERE

PAID
DEC 5 1'36
H. L. BYRAM, Co. Tax Collector

LINES

SOLD FOR TAXES 6-30-34

WRITE THIS OFFICE FOR INFORMATION

EXAMINE PROPERTY DESCRIPTIONS CAREFULLY BEFORE PAYING THIS BILL.

DELINQUENT PENALTY OF 5% AND 50 CENTS COSTS ADDED TO EACH ITEM UNPAID APRIL 30, 1937.

DELINQUENT PENALTY OF 5% ADDED IF UNPAID DEC. 2, 1936 AND 5% ADDED IF UNPAID APRIL 30, 1937.

CLERK

CORR.

BILLED ON THE ASSESSMENT ROLL as per Lib. 22 P. 5648 of Maps Records of L. A. Co.

LOT	BLK.			REAL ESTATE	IMPROVEMENTS	EXEMPTIONS	NET VAL AFTER EXEMPTIONS	TOTAL TAX ITEMS	
53				6400	10090		16490	791	52

	FIRST INSTALLMENT		SECOND INSTALLMENT	
	395	76	395	76
5% PEN.			5% PEN.	
COSTS			COSTS	
TOTAL 1ST		INST.	TOTAL 2ND	INST.

2ND INST.		
TAX	395	76
5% PEN.		
COSTS		
TOTAL		

1936-37

NOTICE OF DELINQUENCY
AUGUST 15th ITEM A STREET IMPROVEMENT BOND CHARGEABLE AGAINST THIS PROPERTY. PAYMENT ON UNPAID INSTALLMENTS MUST BE PAID TO N. T. PUCELL, TREASURER OF THE CITY OF LOS ANGELES, ROOM 12 CITY HALL. PENALTIES ADDED TO AMOUNTS UNPAID.

NOTICE OF ASSESSMENT
THERE IS A CASH ASSESSMENT LIEN ON THIS PROPERTY WHICH SHOULD BE PAID AT ONCE. SEE BUREAU OF ASSESSMENTS, ROOM 11, CITY HALL, LOS ANGELES, TO AVOID FORECLOSURE.

TO ENSURE NOTIFICATION OF IMPROVEMENT LIENS, RECORD ADDRESS & LEGAL DESCRIPTION WITH CITY CLERK, ROOM 360, CITY HALL, LOS ANGELES.

TOTAL PAYMENT RECEIPTED HERE

1936

IF PAYMENT IS MADE BY MAIL, PLEASE ENCLOSE A SELF ADDRESSED STAMPED ENVELOPE FOR RETURN OF RECEIPT.

POSITIVELY NO STAMPS WILL BE ACCEPTED IN PAYMENT OF TAXES

PRESENT THIS BILL WHEN PAYING BOTH FIRST AND SECOND INSTALLMENTS

PAYMENTS MADE AFTER JUNE 30, 1937 REQUIRE ADDITIONAL PENALTIES OF 1% PER MONTH

DO NOT DETACH

307

Mrs. Willie Mae Woodruff, Exhibit #80

Form F.S.D.—10684

COUNTY OF LOS ANGELES
STATE OF CALIFORNIA

NO. 8122

Receipt for Conditional Payment on Account of Delinquent Taxes

When properly stamped by the County Tax Collector this becomes a receipt under Section 3817c, 3217c2, or 3817c3, of the Political Code, as indicated below, for a payment which may be applied on redemption of the within described property which was sold to the State on the ..... day of ..... 19 ..., for the delinquent taxes of 19 .....

ASSESSED TO Gulbar

DESCRIPTION OF REAL ESTATE

TRACT Hillcrest Park Tr

TAX OF 19	ASSESSMENT	VOL.	PAGE	AMOUNT
TAX OF 19				
TAX OF 19				
TAX OF 19				
TAX OF 19				
TAX OF 19				
TAX OF 19				
TAX OF 19				
TAX OF 19				
TOTAL DELINQUENT TAXES				29 16
PREVIOUS PAYMENTS				29 16
BALANCE UNPAID				
ACCOUNT NUMBER				5566
INTEREST ITEM				2-4 10
THIS INSTALLMENT OF TAX				29 16
TOTAL PAYMENT				29 16

SEC	TWP.	R.	W.
LOT	BLOCK	MAP	M. R.
33		22/34	

I, H. L. BYRAM, County Tax Collector, in and for said County, State aforesaid, do hereby certify that the foregoing statement contains a full and correct estimate of the amount of unpaid taxes as shown by the delinquent rolls in my office, and that the payment shown hereon is in accordance with the provisions of Section ... of the Political Code.

12/5 1936

H. L. BYRAM, County Tax Collector.

By ..... Deputy

Office of the County Tax Collector, County of Los Angeles

Received of Edward Woodruff

Address 2446 Rosewood Ave.

PAID
DEC 5 '35
H. L. BYRAM, County Tax Collector
By

THE AMOUNT as shown above, in lawful money of the United States, which may be applied on redemption of the within described real estate, in accordance with the provisions of the section of the Political Code as shown in the above certificate

H. L. BYRAM, County Tax Collector.

..... 193... NO. ..... By ..... Deputy

[Transcript of Proceedings, July 27, 1942.]

459 Appearances: W. W. Potter, Attorney for Willie Mae Woodruff, et al; Champion & Fischl, Attorneys for Leonard J. Woodruff; T. G. Gibson, Ardmore, Oklahoma, and Rupert B. Turnbull, of California, Attorneys for M. E. Heiser.

Before Hon. Geo. Clark, Referee in Bankruptcy. (Hearing held July 27, 1942, Ardmore, Oklahoma, as to claim of M. E. Heiser.)

460 On this the 27th day of July, 1942, the above cause came on for hearing before the Hon. Geo. F. Clark, Referee, at Ardmore, Oklahoma, W. W. Potter of Ardmore, Oklahoma, appearing for and on behalf of Willie Mae Woodruff and children, Champion & Fischl, of Ardmore, Oklahoma, appearing for and on behalf of Leonard J. Woodruff, and Rupert D. Turnbull of Los Angeles, California, and T. G. Gibson of Ardmore, Oklahoma, appearing for and on behalf of M. E. Heiser. Whereupon all parties announced ready, and the proceedings in the matter of the objection to the claim of M. E. Heiser appear as follows:

By Mr. Fischl: If the Court please we offer in evidence Objectors Exhibit A-A, being a certified copy of the Clerk's minutes in the case of M. E. Heiser vs Leonard Woodruff, et al, No. 7256-C Law on the motion of Walter Calvin Smith to dismiss in the law case. This is the last sheet in this instrument.

By Mr. Turnbull: Only the minutes, or the last sheet?

By Mr. Fischl: Yes, sir.

By Mr. Turnbull: May we take the balance out of the exhibit?

By Mr. Fischl: That is unnecessary, as I may want to use it.

461 By the Court: Very well, let it be admitted in evidence.

By Mr. Fischl: We offer in evidence the deposition of H. A. Dewing and C. W. McClain taken on the 8th day of July, 1942, in this matter, being a part of that deposition, for the purpose of showing the extent of the inquiry upon the hearing before Judge Cosgrave, as our Exhibit BB, together with the exhibits, if any, identified by the witnesses. The transcript of the exhibits, or whatever it is that is identified in the deposition. It is stipulated and agreed that the reading of any and all depositions at this time is waived by all parties with the understanding that the Court may read the same at his convenience with the same force and effect as *it* read upon the trial of this case.

By Mr. Turnbull: We so stipulate, and the depositions when introduced may be read by the Court at any time with the understanding that the judgment creditor M. E. Heiser objects to the introduction of any evidence, other than the record evidence, with respect to the judgment in the case of M. E. Heiser vs Leonard Woodruff, No. 7256 C-Law on the ground that it is immaterial and incompetent to the issue, or any issue which can be or could or should have been legally raised; that the subject matter of the proceedings taken before the Court is res adjudicata, and the objectors are estopped by the judgment on the ground
462 of fraud, and the objectors are bound by the rule of full faith and credit which must be given to the judgment of the District Court of the United States for the Southern District of California. We stipulate that the Court may read the depositions at any time subject to that objection and the Court's ruling thereon.

By Mr. Fischl: I am thinking what the effect might be if the objection should be sustained.

By Mr. Turnbull: There is no objection. I don't believe except the objection just made.

By Mr. Fischl: With the understanding that in the event the Court sustains an objection to some evidence that is material because of the form in which it is offered then we will be given an opportunity to correct it, and if the Court

feels that the evidence is not properly proven we want our objection.

By the Court: I don't believe that would be practicable. You had better go ahead and read them, or the part you desire to offer here. I don't care to leave it open that way.

By Mr. Turnbull: Let me make my general objection to all the deposition and you can pass on my objection now and let it go to the whole deposition, other than certified copies of the records you introduce here, and the record of June,

I believe it is, before Judge Cosgraves in the case of

463 M. E. Heiser vs Leonard Woodruff, No. 7256-C-Law,

other than those our objection is that the deposition is incompetent, irrelevant and immaterial to prove any legal objection of these objectors, as shown in my objection heretofore made in this record.

By the Court: Let the objection be overruled.

By Mr. Turnbull: I will stipulate that the depositions may be tendered as part of their proof in this case, and the same objection is made to all and every part of the deposition, and the same may be read by the Court at any time.

By the Court: Very well.

By Mr. Fischl, of Counsel for Heirs of Leonard Woodruff: We offer in evidence the deposition of Francis B. Cobb in so far as it pertains to the proceedings had in the District Court of the United States for the Southern District of California in the case of M. E. Heiser vs. Leonard Woodruff on the motion of the Trustee to vacate the judgment.

By Mr. Turnbull: I take it if Counsel wants to use it he may use it, but I don't believe he can take out what he don't want to use.

By Mr. Fischl: The rule is we can use any part of the deposition we *deisre*. This part deals with reference to the question of res adjudicata but all of this deposition does not deal with that question on the Trustee hearing to vacate the judgment. I assume, however the entire deposition may be considered in evidence now.

464 By Mr. Turnbull: The record does not show that portion of the deposition is being read. I made an agreement with counsel as to that, but now I object for the reason this is not any legal way to offer testimony. We do not know what he has offered, or what portion the Court is expected to read.

By Mr. Fischl: Part of this deposition deals with one question only.

By Mr. Turnbull: I do not believe any part of it is admissable. I think it is a collateral attack upon this judgment.

By Mr. Fischl: On page 33 going down to next to the last line on page 39 is the part we are offering. The balance of the deposition deals with another subject entirely.

By the Court: I presume the entire deposition will be offered.

By Mr. Fischl: At the proper time, yes, sir, your Honor.

By the Court: I do not see why it should go in that way.

By Mr. Fischl: Let it all go in then, your Honor.

By Mr. Turnbull: We make the same objection, your Honor, it is a collateral attack upon a valid and binding judgment. It would be incompetent, irrelevant and immaterial to any issue which legally can be raised here.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By the Court: Your objection goes to the deposition as a whole on account, as you say, it is a collateral attack
465 upon a judgment.

By Mr. Turnbull: Yes, sir, and it is not proper evidence on any issue that could be raised here.

By Mr. Fischl, of Counsel for certain Creditors: If the Court please we offer in evidence as our Exhibit CC Reporter's Transcript of arguments on motion to vacate judgment and set aside default in the case of M. E. Heiser, plaintiff, vs. Leonard Woodruff, No. 7256 C-Law, together with

Reporter's Transcript of rulings and remarks of the Court attached thereto, being Objectors Exhibit 1 to deposition of H. A. Dewing. We offer in evidence as our Exhibit DD certified copy of transcript of record in the United States Circuit Court of Appeals for the Ninth Circuit, styled P. M. Jackson, Trustee in Bankruptcy of the Estate of Leonard Woodruff, a Bankrupt, and Leonard Woodruff, Appellants vs M. E. Heiser, Appellee, No. 9356.

As our Exhibit EE we offer in evidence a certified copy of Appellants' Opening Brief in the same case; and as our Exhibit FF we offer in evidence a certified copy of Appellee's brief in that case, and as Exhibit GG we offer in evidence a certified copy of Appellants' Closing brief in that same case.

By Mr. Turnbull: To each of these exhibits we object on the ground that it is a collateral attack upon a
466 final and binding judgment and is not legal evidence which can be raised as against any final judgment, and is an attempt to have this Court reverse the Circuit Court of Appeals for the Ninth Circuit in which the judgment was affirmed, or rendered.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

LEONARD WOODRUFF called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. Your name is Leonard Woodruff?
A. Yes, sir.
Q. You are the debtor in this proceeding?
A. Yes, sir.
Q. How old are you, Mr. Woodruff?
A. Fifty-five.
Q. Are you a man of family?
A. Yes, sir.
Q. Of whom does your family consist?

A. My wife and three children.
Q. Where were you born?
A. I was born in Page County, Iowa?
A. Of what State are you a resident now?
A. Oklahoma.
467 Q. Since what time, please sir?
A. Since 1912.
Q. Did you ever live in California Mr. Woodruff, were you ever out there?
A. Yes, I have been in a great many States.
Q. What has been the extent of your being in California?
A. I was there over a partial period of years for my health.
Q. Beginning with what year would you say?
A. 1920.
Q. What has been your business the last twenty-five years, Mr. Woodruff?
A. Ranching and oil.
Q. Have you ever, either as a manufacturer or as a broker dealt in gems or antiques or jewelry or anything of that kind?
A. No, I have not, occasionally I have handled a few pieces of jewelry through a Jew store which I considered a benefactor.
Q. That is in your antique store and is a part of the estate?
A. Yes, sir.
Q. Did you ever make any study of mineralogy?
A. Not technically.
Q. What experience have you had with jewelry, gems or mineralogy in general?

By Mr. Turnbull: We object to that on the ground it is incompetent, irrelevant and immaterial and which cannot be legally raised, it cannot be raised by the debtor here, and it is incompetent, irrelevant and immaterial and it is res judicata and is an attack upon a final judgment of
468 the District Court of the United States for the Southern District of California.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Go ahead.

A. As a collector over a period of years and through my intercourse and conversation with dealers I have acquired some knowledge.

Q. To what extent have you dealt with gems during the last twenty-five years?

A. Outside of an old piece of antique, I was a private collector.

Q. Do you know Calvin Smith?

A. Yes, sir.

Q. Where does he live?

A. Los Angeles, California.

Q. How long have you known him?

A. Since 1921 or 1922.

Q. What business is he in?

A. Semi-precious stone cutter and wholesaler.

Q. Did you ever have any business relations with him?

A. In purchasing various different kinds of stones for my collection. I took rocks there and had them ground.

Q. Have you ever had any financial business dealings with him?

A. Not only loaned him some money, that was all.

Q. What business was he connected with?

469 A. The Golden State Gem Company of California.

Q. You have any interest in that Company?

A. No, sir.

Q. Or any stock?

A. No, sir.

Q. Any interest in anywise as a stockholder or otherwise?

A. No, sir.

Q. Did you ever receive any property from it?

A. No, sir.

Q. Do you know M. E. Heiser?

A. Yes, sir.

Q. When did you get acquainted with him?

A. I believe it was 1928.

Q. What was the circumstances under which you got acquainted with him?

A. I am not certain as to that.

Q. What is your best recollection?

A. I met a man down in the Golden State Gem Company office that was in a similar business, I met fifty or a hundred men in there, I am not positive.

Q. You think you met him there?

A. I may have, it seems to me the first time I met him was up at my antique store.

Q. Did you ever buy anything from him?

A. Yes, I bought approximately $2,000.00 worth of black Australian uncut opals.

Q. About when was that, Mr. Woodruff?

A. The first of 1928, I believe, it was, I believe it was the last of April or the first of May.

Q. Did you go to see Mr. Heiser or did he come
470 to see you?

A. He came to the store and displayed them on a table, and in that purchase also there was some black opals that were polluted with slate and stuck together with cement, they were cut.

Q. When was the next time you saw him, if you recall?

A. Well, I saw him quite frequently, as much as five times a week or six, not every week maybe but for several weeks.

Q. Where did you see him?

A. I saw him at the store and my house most of the time.

Q. Did you send for him?

A. No, sir, I did not,

Q. Did you ever send for him on any occasion?

A. No, sir.

Q. How many times would you say you saw M. E. Heiser at your office or your home from the time you bought these gems and the 17th of August of 1928?

A. That would be more or less of a guess, between twenty-five and fifty times, maybe thirty-five or forty times anyway.

Q. On any occasion did you ever send for him?

A. No, sir.

Q. When he came back to you, after you bought the gems from him, what was the purpose of his visiting you when he came back to see you?

By Mr. Turnbull: We object at this time to the testimony of the witness as it is an attempt to collaterally attack the judgment and it is incompetent to prove any issue that can be raised or could be legally raised by this debtor.

471 By the Court: Overruled.

By Mr. Turnbull: Exception. May it be considered that this is a general objection to all this testimony.

By Mr. Fischl: We agree to that, if the Court please.

A. That I would not know except on one occasion he sold me three small cut white sapphires and on another occasion he sold me a very large Australian black opal.

Q. Did you have any conversation about that?

A. Yes.

Q. When did that conversation start?

A. In July I think.

Q. Who started it?

A. Heiser.

Q. Where was it started, your best recollection?

A. It was first mentioned in my home and the second mention was at the office.

Q. At that time did you know anything about Heiser's mining property?

A. Only what he had said.

Q. How many times would you say this mining venture was discussed between you?

A. Every day that he could get in the house or the store.

Q. Did you send for him to engage in those conversations?

A. No, sir, I did not.

Q. Would you give the Court a brief general outline of the discussions?

A. Calvin Smith, if I remember correctly, always brought him up to the house or the store. His home was in Frisco and Smith always brought him up in a car.

472 Q. Smith would come with him on every occasion?

A. I don't think there was an exception to that.

Q. And what was the conversation with reference to the mining venture?

A. It was a new organization he had talked over with Smith and he claimed to have, among other things, some valuable sapphire mine in Australia and had one small shovel that needed repair and wanted to buy another one and it seems the gravel was taken out some twenty to thirty feet deep and had to be pulled up in shovels and be seined and cleaned by some kind of a movement that would eliminate the gravel.

Q. Were they trying to interest you in that proposition?

A. It was naturally a proposition between Heiser and Smith and the fact our mines were brought in, I did not pay any attention to it, to put the cutting establishment in and Heiser was to put in the stock of this Burmah Sapphires Limited, this Company in Australia.

Q. Of the Heiser Burmah Sapphires Limited of Australia?

A. Yes, sir.

Q. Why were they talking to you about it?

A. Heiser found out I had loaned Smith some money in the past and they were not able to handle this deal they wanted to put over.

Q. They want you to put up some money?

A. Yes, sir.

Q. How much did Smith owe you at the time?

A. Well, the amount was indefinite, I thought it was around $60,000.00, it was a lot and it could not be proven. The amount proven was $33,000.00 and twelve or thirteen thousand dollars was questionable and the other
473 amount was lost or misplaced.

Q. You were able to prove $33,000.00 at that time?

A. Yes, sir, and very good evidence of twelve or thirteen thousand more.

Q. Was that money that you had loaned him to open his business on, the Golden State Gem Company?

A. To run his business and buy raw materials and so forth.

By Mr. Turnbull: We make the further objection, if the Court please, for the reason the witness has not cleared up just who he is talking about.

By Mr. Fischl: We are talking about Calvin Smith all the way through.

By Mr. Turnbull: All right.

By Mr. Fischl:

Q. What agreement did you make at that time with Calvin Smith or M. E. Heiser?

A. I promised them that I would loan them $10,000.00 to start to finance the Golden State Gem Company of Nevada.

Q. Did you make them that loan?

A. Yes, sir.

Q. To whom did you make the loan?

A. To W. Calvin Smith.

Q. When did you make that loan, if you remember?

A. Well it was between the 13th and 17th of August, 1928.

Q. Did you have any security for the money that he owed you up to that time?

A. I had a mortgage for $18,000.00.

Q. On what?

A. His machinery and place of business and equipment and stock.

474 Q. Did you have any other security or supposed to have any other security?

A. Yes, sir, I was supposed to but I never got around to it.

Q. What were you supposed to have?

A. Either a second mortgage or increase the first mortgage to around $50,000.00.

Q. Did you have any gems hypothecated?

By Mr. Turnbull: We object to that as incompetent, irrelevant and immaterial and it is a collateral attack upon a matter that has been adjudicated, a valid and subsisting judgment of the District Court of the United States of the Southern District of California.

By the Court: Overruled.

By Mr. Turnbull: Exception.

A. Calvin Smith came up to me once about three weeks

before Christmas, and the jewelry business is like any other business then, it is five to ten times larger—

Q. Were you supposed to have security on any other stuff?

By Mr. Turnbull: We object to that, he has interrupted the witness when he was trying to answer and the testimony would be a collateral attack upon a valid judgment anyway, but I insist that the witness be permitted to answer.

By the Court: Go ahead.

A. He came to me and said he needed some extra money and he brought up a quantity of stuff and I put it in the old First National Bank box and I was leaving shortly and in two or three days he came up and got part of it
475 and the balance stayed there and has been there several years, and at this late date I don't know what became of it. It was considered by Smith to be valuable and by me at the time to be worth maybe five or six thousand dollars.

Q. Who had access to it after it was put in the bank?

By Mr. Turnbull: We object to that as it would be calling for a conclusion of the witness and there was a written record of it which counsel made the subject matter of his deposition here. There was a receipt given for that property and this is some fourteen years later counsel asks this witness for his opinion.

By the Court: Sustain the objection.

By Mr. Fischl:

Q. Did you make any agreement with Mr. Smith or Mr Heiser or either of them with reference to this mining venture?

A. You mean after the loan of $10,000.00?

Q. You have not told about the loan of $10,000.00 yet.

You did say you loaned him $10,000.00.

By Mr. Turnbull: We object to that the record doesn't show what he says.

By Mr. Fischl:

Q. Mr. Woodruff, was the agreement for this loan in writing, this $10,000.00 loan?

A. I believe it was, if it was my attorney kept it for a while and lost it, I don't have it.

Q. Do you have a copy of the agreement now?

A. I am not certain that there was a written agreement.

Q. To whom did you loan the money?

476 A. To Calvin Smith.

Q. What was the agreement you had with him when you loaned him the money?

A. That they would reorganize this new corporation and then I had went as collateral or security on a note and I required he pay some of that. I think they had already gone and demanded payment, as I remember now, and I required him to pay enough to release that, which he did.

Q. Who was that note to?

A. J. E. Bene.

Q. Mr. Woodruff, in the discussion you had between you and Heiser and Smith was anything said about Heiser as to what he was to do in reference to the new corporation?

A. Yes, he was the one that took care of the corporation, I was not interested much in that but Smith was not qualified for that and Heiser hired Barsdale to look after that.

Q. Who told you that, Mr. Woodruff?

A. I found it out.

Q. Mr. Heiser or Mr. Smith in their conversation with you tell you that?

A. It seems to me I found it out eight or nine months later.

Q. We are talking about what happened between you and Heiser and Smith.

A. They told me they would organize a new corporation, I think it started with four million dollars and ended with five million.

Q. Were you in the company?

A. No, sir.

Q. Were you to have stock in it?

477 A. No, sir.

Q. What was Heiser to put in the corporation?

A. He was to put the Heiser Burmah Sapphire mines and some American mines.

Q. Were any stones or gems or sapphires or anything of that kind to be put in?

A. Two tons of sapphires were up at San Francisco and Heiser offered to ship them down there as collateral for the $10,000.00 loan.

Q. Who said that?

A. Heiser did.

Q. What did he say about it?

A. They had no way of getting any money and offered to ship them to the store and said they were sapphires that could be cut into jewelry and had a value then at $40,000.00.

Q. Did you accept the collateral?

A. No, I never saw it and I suggested that they be shipped to Smith and one thousand pounds be put in the window and said it might be an added interest to the public to see the big pile of sapphires cut into jewelry.

Q. And Heiser agreed to that?

A. Yes, sir, and Smith too.

Q. Why did you let Smith have the $10,000.00?

A. Because, well Smith had not paid me but he had been honest with me up to that time and if the Company was a success he would commence paying me.

Q. Did Heiser or Smith say anything to you as to Smith's ability to pay the loan?

A. They both assured me that would be easy.

Q. What?

478 A. To repay the loan.

Q. How?

A. Smith would pay me out of his profits.

Q. Did he tell you anything else about what the new venture would do?

A. Heiser was to ship the sapphires to Smith and Smith was to cut them and Heiser was going on a brief trip to Europe, either Germany or France and said something about France having a monopoly on this kind of business, but anyway he wanted some kind of a deal made in Germany to handle certain stones there, and he claimed they, Heiser and Smith would get a percent out of the business and he said this trip would take two or three months.

Q. You let Smith have this $10,000.00 on the strength of

these statements made to you about the corporation and on Heiser turning over to you these stones?

A. All of them, and he was to put $10,000.00 in the window.

Q. You mean Smith?

A. Yes, sir.

Q. Was any statement or any other conversation about you going in the Company?

A. There were many statements made, yes, but I was not to go into the Company. They wanted me to go and I finally said, that is go to Australia or Europe or somewhere, and I finally said that I could not go but my brother happened to be there and he might go.

Q. What was his name?

A. Herman. If he would go out and inspect the sapphire mines and this dredge that needed repairs, look at it and perhaps purchase another one and he might stay there and work, and that pleased Heiser and then I made the
479 arrangements for him to go in two or three weeks.

Q. Where was that arrangement made?

A. In the basement of my wife's home.

Q. Who was present?

A. My brother, my wife all the time except she might have gone upstairs for water or something, and Heiser and Smith part of the time, part of the time Calvin Smith was upstairs talking to my mother and there was one attorney there, I am not sure which one, it might have been Cobb or Hornsby.

Q. Anyone else there?

A. Earnsharp was there.

Q. And that was in the basement of your home?

A. Yes, sir.

Q. Will you repeat the agreement made on that occasion?

A. The agreement was my brother and Heiser would go to Australia in two weeks and not later than three weeks and they left with the understanding it would be about two or three weeks. They were to inspect the mines which Heiser told about, the gravel and seine and to repair the dredge.

Q. Was that agreement ever carried out as far as you know?

A. No, my brother waited two weeks for him. Heiser

said he had to go back to San Francisco to ship the sapphires to Smith but he shipped them to the bank and Heiser left for Europe and Smith went to New York and took another man by the name of Graves with him.

Q. How soon after you agreed to let him have that $10,000.00 was this agreement to go to Australia made?

A. The money was given to them approximately
480 the middle of August and the 2nd day of September I left for Oregon, it was between those two days. I think in two or three days after the check was issued.

Q. And immediately after that Heiser and Smith disappeared?

A. Yes, they could not be found.

Q. And you left the 2nd of September?

A. Yes, sir.

Q. And where did you go?

A. To Oregon.

Q. How long did you stay in Oregon?

A. Until the 20th of November.

Q. Then where did you go?

A. To Los Angeles.

Q. How long did you stay here?

A. A week or ten days.

Q. Did you see Heiser or Smith during that time?

A. No, sir.

Q. Then where did you go from there?

A. I never looked for them at all, they looked for me.

Q. After you got back to Los Angeles in November did you look for Smith to see how he was getting along?

A. No, I came on to Oklahoma.

Q. How long did you stay there?

A. I think until about March or April, the first of April.

Q. What was your business back here during that time?

A. I was perfecting a block of acreage out southeast of Lone Grove, getting ready to drill a well.

Q. Did you subsequently drill that well?

A. Yes, sir.

481 Q. Then you returned to Los Angeles about the first of April, 1929?

A. Yes, sir, I stayed here until about the first of April, and returned.

Q. Did you see Heiser or Smith upon your return?

A. Not Heiser but I looked for Smith, I heard rumors he had made some—

By Mr. Turnbull: We object to that, his rumors.

By the Court: Sustained.

By Mr. Fischl:

Q. Did you receive any reports as to his financial condition or as to the Golden State Gem Company?

A. Yes, sir.

Q. Did you go to the place of business of the Golden State Gem Company?

A. Yes, my wife and I drove down there six or seven times looking for him.

Q. What was your purpose?

A. Trying to see Smith.

Q. Did you finally catch him?

A. Yes, finally.

Q. Did you observe the condition of the store at that time?

A. Yes, his sister was there the first time and a lot of stock was missing, great quantities of it.

Q. You mean stock that was there before you left?

A. Yes, sir, and his sister said she did not know where it went, and there was some monies that he was owing and it was getting in bad financially, financial bad shape.

Q. What conditions, or what connection did the sister have with the business?

482 A. She owns practically a half interest in it. There was seven or eight thousand dollars in stock held outside of the family.

Q. Was she an officer of the Company?

A. Yes, she was, I don't remember now.

By the Court: What company?

A. The Golden State. Her name was Buck, she had one son and Smith's father was living too and they all had stock. There was one other woman outside of the family that had $7500.00 in stock and the other was small amounts, maybe two to three hundred dollars.

By Mr. Fischl:

Q. In other words the Company was in bad?

A. Yes, it had been sued and maybe an attachment gotten out.

By Mr. Fischl: If the Court please, in connection with this witness' testimony, we desire to offer in evidence as our Exhibit HH, a transcript of the proceedings in case 275,003 in the Superior Court of the State of California in and for the County of Los Angeles, styled Adolph Kosches doing business under the fictitious firm name and style of Kosches Bros. as plaintiff vs. The Golden State Gem Company, a corporation, defendant.

By Mr. Turnbull: We object to that on the ground it has no connection with this proceeding at all and it is a case brought by Adolph Kosches upon a promissory note signed by Smith, it has no connection with this case or with
483 this witness as far as I am able to see, it has no connection with this case and the witness has not mentioned this suit and if there are recitals in this matter that would be advantageous to this witness we would be entitled to examine Kosches on it.

By the Court: What is the theory?

By Mr. Fischl: I assume from counsel's statement he is not familiar with the issues here. The judgment creditor alleges in his complaint, upon which he obtained judgment and which is the subject of attack here, that this witness and Smith agreed to pay all the debts of the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and it is our theory that one became merged into the other and they were both the same. In fact, they allege the witness here was to pay all the debts of the Company and put the Company on a sound financial basis, that he was to furnish the money to do it and Heiser further alleges that relying upon that agreement he put the so-called gems in the bank at Los Angeles and then he alleges that after he left this debtor and Smith conspired to defraud him of his stuff, and in connection with Kosches Bros., they allege he filed a foreclosure suit and attached this property to defraud him of his stuff, and we are
484 offering this to show the absolute falsity of that statement and this is a vital chain in the link, and this transcript shows that after Woodruff let Smith have the

$10,000.00, relying on the agreement that Smith and Heiser had made, Smith executed a note on December 18th, 1928; that Smith and Heiser disappeared after they got Woodruff's $10,000.00 and this note was executed on December 18th, 1928 and suit was filed on that note April 1st, 1929, about the time that the witness had returned to California and learned that the Golden State was in financial straits and it is to show the statements in the complaint are not founded upon the truth and to show Woodruff's action was taken to protect himself.

By Mr. Turnbull: Counsel says it goes to show this judgment should be set aside because of perjury. I don't think there is any law in Oklahoma or California that permits a judgment to be set aside on account of perjury. The finality of the judgment must be considered. What some other judge thinks about it is immaterial, a judgment cannot be set aside on account of perjured testimony, I have a long list of cases on that. Also a long list of cases from the United
485 States Supreme Court where a judgment is attacked for fraud. (Long list of cases cited.) That is a legal question and I am raising it now. I think it is sound. I think all the cases are the same way as to the finality of judgment and I object to it on the ground and for the purpose that counsel offered it. It is incompetent, irrelevant and immaterial.

By Mr. Fischl: It is to show the attachment feature of the case, if the Court please.

By the Court: I will overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. After you obtained the information as to the Golden State what did you do about it in April of 1929?

A. When I caught Smith he said he had not received any money.

Q. Not what Smith said, what did you do?

A. He had not taken any money from the new corporation which had already been formed and he had labor down there that was overdue and would have to close down and he would not make me any explanation as to the disappear-

ance of the stock, and there was this judgment against him and this woman with $7500.00 worth of stock, she wanted her money and I told Mr. Smith he had to do something or put it in the hands of an attorney, that I would put it in the hands of an attorney.

Q. Did you?

A. Yes, sir.

486 Q. What attorney did you see?

A. Coleman.

Q. What action did he take?

A. He took action on the foreclosure of the $18,000.00.

By Mr. Turnbull: We object to this witness' testimony as to that, the record is here, all of it.

By Mr. Fischl: There never was any record proceedings, any Court proceedings in the foreclosure of the $18,000.00 mortgage.

By Mr. Turnbull: I am in error as to that, if he has reference to that foreclosure.

By Mr. Fischl:

Q. Did you foreclose your $18,000.00 mortgage?

A. Yes, sir.

By Mr. Turnbull: We object to that on the ground it is not the best evidence.

By Mr. Fischl: We offer in evidence, if the Court please, a certified copy of the judgment roll, as our Exhibit "II" and our Exhibit "JJ" a transcript in the case of Leonard Woodruff, plaintiff, vs. Golden State Gem Company, a California corporation, and Golden State Gem Company of Nevada, a Nevada Corporation, defendant.

By Mr. Turnbull: These are promissory notes signed by Smith and Woodruff in favor of someone else.

By Mr. Fischl:

Q. Had you previously endorsed notes for the Golden State?

A. Yes, sir.

Q. You remember the amount?

487 A. It was to the Jeddis Company, I think one of them.

Q. Was that for the Golden State Gem Company, the California corporation?

A. I think so.

Q. Do you remember the circumstances under which you endorsed that note?

By Mr. Turnbull: If the Court please, if counsel merely wants this for the record all right, but I object to it, it has been a long time ago, and we do not know anything about it.

By Mr. Fischl: If the Court please, the gentleman is off balance as usual, he knows all about it and knows we have a copy of the record here.

By Mr. Turnbull: He has a certified copy of it, he says, and he says he is offering it in evidence. We started this case two or three years ago and that is a long time, for me to remember, and when it comes to fourteen years, since this proceeding was had, that is too long a time for anyone to remember.

By Mr. Fischl: The judgment under which the attachment was issued and the stones sold, and the judgment and the suit based upon the two notes of June 20th, 1928.

By Mr. Turnbull: And this Jeddis note is dated in November of 1926.

By Mr. Fischl: You don't know what you are talking about there either.

488 By Mr. Turnbull: I am objecting to his leading the witness. I am saying the notes in favor of Jeddis are dated in November of 1926.

By Mr. Fischl: These notes are dated in January of 1928.

By the Witness: One of these notes was to run for eighteen months and one for a year.

By Mr. Fischl: How much were the notes for?

A. They amounted to around $1100.00, or a little more.

Q. When you signed the notes?

A. I think he had reduced them a little at that time, Smith paid a little on them. It was a little over $1100.00, these are two of the notes.

Q. These are two notes as shown by Exhibit "JJ"?
A. Yes, sir.
Q. Did you have to pay the notes?
A. I paid one in full and I paid about $350.00 on the other and Smith paid $150.00.
Q. When was that you paid those notes?
A. Well, I think the latter part of 1929.
Q. I show you the two notes as shown by Exhibit "JJ", it shows the notes were paid on April 9th, 1929, is that about the correct date?
A. I guess so.
Q. Did you turn the notes over to your attorney for collection?
A. Yes, sir.

By Mr. Turnbull: He only read the endorsement on one of the notes.

By Mr. Fischl: That is all I wanted to read.

By Mr. Turnbull: Counsel only read from one note and it does not so recite.

489 By Mr. Fischl: You can cross examine him, when I get through. I offer this transcript, Exhibit "II" and "JJ" in evidence, that is the transcript on which the suit was brought wherein Leonard Woodruff was plaintiff and the Golden State Gem Company, a California corporation, and the Golden State Gem Company of Nevada, a Nevada Corporation were defendants.

By Mr. Turnbull: I object to it for the reason he has already offered it.

By the Court: Go ahead.

By Mr. Fischl:

Q. Mr. Woodruff, did you attend the Sheriff's sale?
A. Yes, sir.
Q. Where was that held?
A. In Los Angeles in the storage or wholesale house.

By Mr. Turnbull: We object to that, the instrument shows where it was sold and the return is in evidence.

By Mr. Fischl: What was sold at that sale?

By Mr. Turnbull: We object to that, the transcript shows the sale by the Sheriff and the return of the Sheriff.

A. There was thirty-five or thirty-six sacks of rocks that I saw there for the first time.

By Mr. Turnbull: At this time we move to strike the answer of the witness which now shows it is contrary to the Sheriff's return and the Sheriff's return shows the date of the sale and what was sold and to whom it was sold.

490 By Mr. Fischl: We are not attacking the return of the Sheriff.

By Mr. Turnbull: It will be shown that Mr. Woodruff bought it in at his own sale and he took thirty-five sacks of it to his home and kept it for months and months, and then afterwards when he offered it back Mr. Heiser said the good stuff was taken out, and we say all this is incompetent.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl: How many bidders were there that day?

A. There were about nine people there, about five bidders, the others were not interested.

Q. Did you buy some stuff at that sale?

A. Yes, the second block.

Q. Who bought the first lot?

By Mr. Turnbull: We object to that on the ground it is not the best evidence.

By the Court: Overruled.

By Mr. Turnbull: Exception.

A. Irving Oreck bought the first lot.

Q. What did you buy?

A. He bought one sack and I bought the remaining sacks for $1,000.00.

Q. Do you recall how many sacks you bought?

By Mr. Turnbull: We object to that on the ground it is not the best evidence and is an attempt to contradict the record.

491 By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Do you remember how many sacks you bought?

A. Some of the sapphires were on the floor, they were piled up.

Q. Were they sacked up later on?

A. There were thirty-five closed sacks and two or three sacks on the floor.

Q. That is what someone told you?

A. No, I examined them.

Q. What you examined, and the stuff you bought, at the warehouse there, what did you do with it?

A. I left it there for several months.

Q. Left it there in storage?

A. Yes, sir.

Q. In whose name was it stored?

A. In my name.

Q. Then when did you take it out of there?

A. I took it out of there in something like eight or nine months.

Q. Why did you take it out?

A. They were attacking me on the thousand dollar value and this man Oreck, about two days after his bought his sack came and tried to get another sack from me.

Q. Why did you take that stuff out of storage?

A. It was not worth what I was paying for the storage, fifty or sixty dollars a month.

Q. You took it out on account of the storage charges?

A. Yes, sir.

Q. Where did you put it then?

492 A. Up at the house.

Q. How long did it stay there?

A. Something like eighteen months.

Q. During the time after you bought that stuff at the Sheriff's sale and all the time it was in storage and during the time it was at your house, did you take anything out of the sacks?

A. No, it was in a room with a locked door, outside of the truck drivers no one knew it was there.

Q. Did you take anything out of there, any stone or any kind of material out of any of those sacks?

A. No, I did not.

Q. Did anyone else to your knowledge?

A. No, sir, they did not.

Q. Or down at the warehouse?

A. No, sir.

Q. What eventually happened to it?

A. The door was never unlocked.

Q. What happened to it after that?

A. Heiser went down to a British Consul and said someone has misappropriated his sapphires and he complained to the American Consul and it was taken to the Grand Jury.

Q. Where were you at that time?

A. At the hospital.

Q. Who attended to this for you?

A. My wife.

Q. Did you have an attorney communicate with you at the time?

A. Yes, sir.

Q. Who?

A. Hornsby and Cobb.

493 Q. At that time had anything been taken out of the sacks?

A. No, sir.

By Mr. Turnbull: We object to that as incompetent, irrelevant and immaterial. This witness did not state that he took this stuff to the Grand Jury.

By the Court: He said it was thereafter taken to the Grand Jury.

By Mr. Fischl:

Q. That is what you said?

A. I was in the hospital and my wife came and said the Grand Jury wants an explanation, and she said, "They are wanting to get that stuff and you are not strong enough to look after it," and I said, "You get two men and follow them and don't put that in my name or in no member of the family, and ask the Grand Jury to put it in escrow and keep it there until it was settled".

Q. Had you taken anything out of the sacks?

A. No, sir.

Q. Or had anyone else during that time?

A. No, sir.

Q. Had you learned before the Grand Jury matter came up, had you learned that Heiser was claiming anything was taken out of the sacks?

A. No, sir.

Q. You instructed your wife to put that in storage or in escrow?

A. The Grand Jury would not accept that responsibility, and Heiser got on the truck and saw every bit of that stuff and knew all about it, and then he said he was not there, that he was sick in bed.

494 By Mr. Turnbull: We object to that as hearsay, if the Court please.

By the Court: Sustained as hearsay.

By Mr. Turnbull: I would not object if it was the facts.

Q. Have you ever taken anything, anything of any value or any property of any kind out of this so-called raw gems?

A. No, sir, I never did.

Q. Have you ever been repaid any part of the $10,000.00 you loaned to Smith?

A. No, sir.

Q. Mr. Woodruff, state whether or not you ever made any statement to Mr. Heiser or any statement in his presence in reference to the assets of the Golden State Gem Company of California.

A. One time and at that time I referred him to a firm of accountants there that had taken an invoice of the Smith assets, I had seen it and Heiser told me he had seen it.

Q. An inventory of some sort?

A. Of his stock, yes, sir.

Q. Tell the Court whether or not you relied on that inventory, to some extent, in advancing the money you advanced to Smith.

A. Yes, sir, it showed three hundred and twenty thousand or three hundred and sixty thousand dollars worth of assets.

Q. Did you have anything to do with making that inventory?

A. No, I hired the same company of accountants once or twice myself and they were considered reputable.

Q. Did you tell Mr. Heiser that Harry Sinclair, Frank Vanderlip, Charles Chaplin, Davis of the City Engineering Company of Detroit, a Mr. Howe of Chicago, Feagen
495. & Company, Brock & Company, and the leading jewelers of the United States were regular customers of the Golden State Gem Company?

A. No, that was Heiser and Smith swapping stories. They sat there and talked about that kind of business and swapped stories for hours.

Q. Smith was building up his company and Heiser his mines, is that right?

A. Yes, sir.

By Mr. Turnbull: We object to that as leading and suggestive.

By Mr. Fischl:

Q. This man Heiser, the plaintiff, alleged in his complaint this paragraph C., on page seven that, "The defendant Woodruff requested that plaintiff send for his said raw gems in San Francisco as aforementioned and more particularly described in paragraph VI hereof, which said raw gems were then in San Francisco, and bring them to Los Angeles so that the defendant, Smith, could examine the same for the said Woodruff and that the said Woodruff proposed and represented to plaintiff herein as follows, to-wit: If the said defendant Smith approved of the said raw gems aforementoined, that he, the said Woodruff, would finance the said mines and leases of the said plaintiff herein—"

A. No, he suggested that, Heiser suggested that we do all that and I merely suggested that they put $1,000.00 worth in the window up at Smith's place and he had thirteen cutters at the time, but these were not gems but rocks.

Q. Were those the same gems that Heiser represented as being worth *$40(?),000.00?*

496 A. Yes, sir.

Q. It says here that "if the defendant Smith approved of the said raw gems aforementioned, that he, the said Woodruff, would finance the said mines and leases of

the said plaintiff herein; that the assets of the said Golden State Gem Company of California, an agency through which he the said Woodruff and the said Smith operated on the basis of two-thirds to the said Woodruff who financed the same, and one-third to the said Smith who ran the business."

A. There is not a word of truth in any of that.

Q. "That the Company had an indebtedness of about $15,000.00 to general creditors which he, the said Woodruff, would forthwith pay and satisfy," did you agree to pay that amount?

A. No, sir, not one cent.

Q. And it goes on to say that "the said Woodruff held a chattel mortgage on certain assets of said Company of $18,000.00 as a protection against creditors should any emergency arise, which he the said Woodruff would forthwith cancel and satisfy, and that he, the said Woodruff, held certain gems of the value of about $75,000.00 in a box in one of his vaults as security for certain other money which the said Company owed him"?

A. No, sir, that is not true.

Q. Did you agree to cancel the $18,000.00 you had against Smith?

A. No, sir, I did not. I did agree to put off the collection of it, of forcing Smith to pay it in order to give Smith a chance to repay me.

Q. And it says "which indebtedness he would also
497 cancel and which gems he would forthwith return to the said Company," is that true?

A. It was all optional and depended on my brother going to Australia.

Q. If he did go there and came back and proved the mines were there what were you to do?

A. It was still optional with me. If he had said there were mines there I would have advanced more money but there was no definite amount, but I would have repaired the dredge he was complaining about needing repair, that is if it had been necessary, but afterwards I found out there were not three sapphires in that whole mine.

Q. And then it goes on to say that the said Smith and Woodruff would cause to be formed by their lawyer, whom they named as Alfred Barstow, a corporation to be known

as Golden State Gem Company of Nevada, did you agree to organize any such Company?

A. I had nothing to do with it, no, sir.

Q. Were you to do that?

A. No, I told them to go ahead, I had no financial obligations other than I had already loaned Smith some money, that is all I had to do with it and all I was going to have to do with it.

Q. Were you to be interested in the Company?

A. No, sir.

Q. Did you know this fellow Barstow?

A. No, sir, I did not.

Q. Did you hire him?

A. No, sir.

Q. Did you hear Heiser or Smith say who had
498 hired him?

A. Smith said that Heiser hired him.

Q. Heiser present when Smith said that?

A. He was in Los Angeles when they were discussing it.

Q. Were you interested in any way as to the organization or formation of a corporation or company or who the lawyer might be?

A. No, sir, I was only interested to the extent that Smith pay me what he owed me.

Q. And then on page nine it says, "That the said Woodruff and Smith immediately upon the incorporation of the said Nevada corporation would cause to be assigned to the said corporation the said assets of the said Golden State Gem Company of California of the value of $420,000.00, free and clear of all indebtedness whatever?"

A. No, there is nothing to that, they merely reached up and got that out of the air.

Q. Did you have any control over any of the assets of either company?

A. No, sir.

Q. And "that thereupon the plaintiff herein should contract with the said company for the account of the Heiser Burmah Sapphires Ltd., for a period of forty years to sell it all the sapphires and opals and other gems owned, mined, bought or produced at prices as follows: Best Blue Sapphires—$50.00 per oz; Second Blues—$25.00 per oz; Third

Blues $10.00 per oz; Fourth Blues—$5.00 per oz; Industrial Sapphires—from 25c per oz. to $10.00 per oz.; Rough Opals $1.00 to $40.00 per oz.; Cut Opals—25c to $2.00 per carat; Opal Beads—$1.00 ea. to $3.00 each, sizes from 3 mm. to 10 mm; Opal Doublets—50c each to $5.00 each; Cut Sapphires Best Blue—$10.00 per carat; Second Blue—$5.00 per
499 carat; Large Best Fancy Colored Sapphires—$40.00 per oz.; Second Best Fancy Colored Sapphires—$20.00 per oz.; Third Best Fancy Colored Sapphires—$10.00 per oz.; And for very special rare gems, whether diamond, opal, emerald or sapphire, a special price be mutually arranged satisfactory to both parties." Did you have any such agreement with Heiser or Smith?

A. No, I don't know anything about what that is. I did not have any such agreement and do not know anything about that.

Q. What they were to pay Heiser?

A. No, I don't know anything about that.

Q. A contract for a period of forty years to sell it all the sapphires and opals and other gems mined, bought or produced at prices as follows, the prices I have read you heretofore?

A. That is ridiculous, that is ridiculous, no one would make any such contract as that, that is silly.

Q. Did you ever enter into any discussion to direct the terms or the conditions or the amount of stock to be issued or anything else in regard to the Nevada Corporation?

A. No, I believe I did suggest to Cal Smith at one time to keep it down as low as possible.

Q. On Page Nine it says, "That the Nevada Corporation should have a capital of $1,500,000.00 of preferred stock and $3,500,000.00 of common voting stock; that the said pre-
ferred stock should be $10.00 per share with interest
500 at 80c annually. That $3,500,000.00 of said stock be divided equally, one-half to plaintiff herein and his nominees and one-half to defendants Smith and Woodruff, one-third of which one-half was to go to Smith and two-thirds to the said Woodruff."

A. No, there is not a word of truth in that.

Q. And it says that a majority of the said stock so al-

lotted was to be pooled for five years for the purpose of retaining control between the said parties.

A. Well, I don't know anything about that, I never even heard of it.

Q. You had nothing to do with that?

A. No, sir, I did not.

Q. "That in return for the issuance of the said stock to plaintiff, plaintiff herein should cause to be transferred to the said corporation 10,000 cumulative, preference and participating shares of 1 each, of the Heiser Burmah Sapphires, Ltd. treasury stock and 2,000 of the ordinary voting shares of the said stock with the further provision that the said new corporation to be formed would be financed by the said Woodruff, and that $150,000.00 would be made available by said Woodruff over a period of eighteen months to be furnished as required, and $30,000 in cash made available by the said Woodruff for the immediate uses of the corporation, and that the said Woodruff forthwith cause two steam shovels as required to be sent to Australia and that the said corporation would further send over to Australia for development of various diamond properties then held by claim titles of plaintiff, in the neighborhood of $200,000.00
501 to be used for constructing dams, flumes, laying pipe lines, building machines that would save the diamonds, buying different machinery, meeting payrolls, for the diamond and emerald deposits then held by plaintiff in the form of claims or holdings, and that plaintiff should further transfer to the said company free of encumbrances 30,000 oz. of Industrial Sapphire, part of the said raw gems aforesaid then held in San Francisco by plaintiff." Was any such agreement as that made between you and Heiser and Smith?

A. No, sir. That was all a big fantastic tale of Heiser's and I did agree that my brother could go to Australia with him and look at what he claimed to have over there, and then Heiser ran off and he never had any mines anyway. Any agreement I might have had with Heiser was conditioned upon my brother going to Australia.

Q. Are these allegations, which I have been asking you about true or false?

A. Absolutely false.

Q. And it goes on to say on Page Ten, "That the said plaintiff herein would be paid a salary of $25,000.00 per year by the said corporation so to be formed by defendants, together with all of his expenses, and that the said plaintiff herein should immediately proceed to London and Europe for the purpose of obtaining orders and negotiating for business, and that the plaintiff herein should advance the expenses of the said trip until he arrived in London, and that defendant Woodruff would see that funds were forwarded to him in London to reimburse him for his outlay of expenses, and would from that time on advance
502 expenses of the plaintiff as required."

A. Wherein he says he was going to Europe, that is the truth.

Q. Going to London first?

A. One way or the other, that is all the truth there is in that entire statement, he said he was going to London and Europe. He already had the $10,000.00 and Smith went to New York but he was left there.

Q. Did you agree to send any money to London for the benefit of Heiser?

A. No, sir.

Q. Did you ever hear from Heiser after he left for London?

A. No, not me.

Q. Then on Page Eleven he further says, "That Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems aforesaid and described in Paragraph VI hereof and then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight sacks totalling over forty-two hundred lbs. of raw gems, and the said large piece of jade weighing twenty-eight lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed."

A. There is not a word of truth in that.

503 By the Court: It is now twelve o'clock and we will recess until one o'clock.

(Whereupon Court recessed until the hour of one o'clock this day.)

Thereafter and on the same day, at the hour of one o'clock P. M., Court met pursuant to recess taken for the noon hour, after which the following further proceedings were had herein:

LEONARD WOODRUFF recalled, having heretofore been duly sworn as required by law, testified as follows:

By Mr. Fischl:

Q. Mr. Woodruff, he alleges, the judgment creditor Heiser alleges in his Complaint 7256-C, on Page Eleven, "That said Woodruff and Smith further represented to plaintiff that he should bring all of the said raw gems then in San Francisco, to Los Angeles, which said raw gems consisted of approximately thirty-eight sacks totalling over forty-two hundred lbs. of raw gems, and the said large piece of jade weighing twenty-eight lbs., and place them in the vault of the United States National Bank at Eighth & Spring Streets, Los Angeles, California, and give the said Smith access thereto with the right to withdraw the same, with the understanding that the said Woodruff and Smith would cause the 30,000 oz. of Industrial Sapphires included in the said shipment to be delivered to the said new company to be formed, only and not before the assets of the said

504 Golden State Gem Company of California, so represented by said defendants to have a value of $420,000.00, were transferred to the said new company to be formed, free and clear of all indebtedness whatever, and that thereupon and thereafter the said new corporation so to be formed would purchase and pay therefor to the said plaintiff herein, c.o.d., such of the balance of the said raw gems as might be required by them from time to time or such as the said defendant Woodruff might desire to purchase from time to time for said corporation at the price stipulated in the aforementioned agreement and as more particularly set out in subdivision c hereof, and the said defend-

ants did further represent to plaintiff herein that the said raw gems aforementioned in Paragraph VI hereof, and each and all of them, would be perfectly safe in the said United States National Bank under the said conditions, and would be protected at all times by the said defendants and each of them for the account of the said plaintiff, and that the said 30,000 oz. of Industrial Sapphire would be removed only under the condition aforementioned and not otherwise, and that the remaining portion of the said gems valued in excess of $130,000.00 would only be removed provided such as were removed would be paid for forthwith to plaintiff herein as removed, and any of the said gems so removed would be paid for in cash by the said defendants by depositing the said cash to the account of the said plaintiff herein in the said United States National Bank, which account was opened by plaintiff herein under said agreement with the said
505 defendants in the name of Australia American General Mining Company by plaintiff herein.'

Are those allegations true or false?

A. They are all false.

Q. Mr. Woodruff, did you know when this material was placed in the United States National Bank as mentioned here at Eighth & Spring Street?

A. No, it was to be turned over to Smith, it was not to be put in the bank, I did not know anything about that.

Q. Was that the agreement under which you let him have the $10,000.00?

A. Yes, sir, that it was to be turned over to Smith?

Q. Did you ever ask the bank if that stuff was there?

A. No, sir, I did not.

Q. Did you ever see the stuff in the bank?

A. No, sir, it was not supposed to be placed there.

Q. Did you ever go to the bank to try to get permission to see the stuff?

A. No, sir, the first time I ever saw it was at the Sheriff's sale.

Q. Then in Paragraph E, "Thereupon said defendants did through their said attorney Alfred Barstow prepare the formation of the said corporation to be known as Golden State Gem Company of Nevada, stating to plaintiff that it was for the purpose of carrying out the said representa-

tions and promises and did cause the said company to be incorporated. That plaintiff relied upon and thereupon relying upon the said representations, each and all of them, and believing them to be true, and without which repre-
506 sentations and belief therein plaintiff would not have so acted, plaintiff proceeded to bring the said raw gems described in Paragraph VI herein, to Los Angeles, and acted as hereinafter set forth." You say you had nothing to do with forming the Golden State Gem Company of Nevada?

A. No, sir, not a thing in the world.

Q. Then reading further from Paragraph E., "That the said raw gems and all of them did arrive in the City of Los Angeles on or about the 13th day of August, 1928. That on or about the 16th day of August, 1928, and relying upon said representations and believing each and all of them to be true, plaintiff did cause the said gems to be deposited in the said depository at the said United States National Bank at Eighth and Spring Streets, Los Angeles, California, and did give the said defendant Smith access thereto. That thereupon the said defendant Smith did examine the said gems and did approve the same and did proceed with the said plaintiff herein to the office of the said defendant Woodruff. That at said time the said defendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California." Mr. Woodruff, do you remember whether or not you saw Smith after this agreement to go to Australia was made before you left Los Angeles?

A. I am not positive, I am sure I did not. I know I did not see Heiser and did not know the sapphires were in town.

Q. Then it says, "That at said time the said de-
507 fendant Coleman was present and said defendant Woodruff stated that said Coleman was attorney and adviser of the said Woodruff and Smith, and their agency the said Golden State Gem Company of California, but that the said attorney Barstow was more familiar with incorporation matters, for which reason the said Coleman had not been used to incorporate the said Nevada Company and that

the said Barstow had incorporated their said agency the said Golden State Gem Company of California. That said defendant Woodruff did there and then state to this plaintiff that he had cancelled and released the said $18,000.00 indebtedness of the Golden State Gem Company of California and the said Chattel mortgage securing the same and that he had cancelled and released the indebtedness and lien covering the $75,000.00 worth of gems of the Golden State Gem Company of California which he held in his safe deposit box which he had returned to the said Golden State Gem Company of California, and he, the said defendant Woodruff did then and there in the presence of this plaintiff hand to the said defendant Smith checks totalling approximately $10,000.00 which defendants then and there stated was sufficient to pay all of the remaining debts of the said Golden State Gem Company of California, and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 were then and there free and clear of all indebtedness of whatsoever nature, and the said defendant Woodruff did then and there state that he would give to the new corporation as and when required for financing, a further sum of $30,000.00." Are those allegations true or false?

508 A. Absolutely false.

Q. And furthermore, "He would forthwith sell shares in Oklahoma and otherwise, and that he would immediately put the company upon a financial basis so that it could conform with its agreement and that plaintiff herein need have no further financial worries." Is that true or false?

A. Well, I never heard anything about it, it is false as far as I am concerned, I was not concerned over his financial worries.

Q. Did you ever sell stock in any company?

A. No, sir.

Q. Or did you ever sell any stock in that company?

A. No, sir, I never did.

Q. Were you ever engaged in selling stock in any way?

A. No, sir.

Q. And then it goes on to say, "That none of the gems of the said plaintiff in the said vault at the said United

States National Bank except the said 30,000 oz. of Industrial Sapphires would be removed in any form unless payment therefor at the price agreed upon was first deposited to the account of the said plaintiff in the said bank, and that the said assets of the said Golden State Gem Company of California valued at $420,000.00 would be forthwith transferred to the said new Golden State Gem Company of Nevada free and clear of all indebtedness, and that thereupon the said Woodruff and the said Smith would cause to be transferred to the said Nevada company the said 30,000 oz. of Industrial Sapphires, and that the said 30,000 oz.
509 of Industrial Sapphires would only be transferred to the said Golden State Gem Company of Nevada after the transfer of the assets of the Golden State Gem Company of California free and clear of all indebtedness whatever." Is that true or false?

A. Smith and Heiser were having a written contract as to that and I was not concerned in it.

Q. These are the statements of the petition?

A. There was no written contract as far as I am concerned as to any of it, but that was to be in the corporations between Smith and Heiser that I had nothing to do with.

Q. Not any of this is true then so far as you know?

A. No, sir, it is not.

Q. "That thereafter the said defendant Woodruff and the said defendant Smith did state and represent to the said plaintiff herein that the formation of the said Golden State Gem Company of Nevada and had been completed and that all of the said assets of the said Golden State Gem Company of California valued at $420,000.00 had been delivered over to the said Golden State Gem Company of Nevada free and clear of all indebtedness, and thereupon plaintiff herein did cause to be transferred to the said corporation the said shares aforesaid. That thereupon said defendants Woodruff and Smith did represent to plaintiff that if he would forward the sum of $5,000.00 to his mines in Australia, he the said defendant Woodruff upon arrival of plaintiff in London, would cable to said plaintiff the sum of $5,000.00 to reimburse plaintiff for said advance, and that said plaintiff did forthwith forward to the said Heiser Burmah
510 Sapphire Mines at Australia the said sum of $5,000.00,

relying upon the said representations and believing them to be true." Is that true or false?

A. That is not true at all as far as Smith is concerned I don't know however, but as far as I am concerned, it is absolutely false.

Q. Those statements are not true as to your part of it?

A. No, sir.

Q. Then he further alleges in Paragraph Fifteen, "That in furtherance of the said conspiracy and as a part thereof and further acting fraudulently and deceitfully and for the purpose herein alleged, said defendant Woodruff did on or about the 2nd day of April, 1929, through said defendant Coleman as attorney, filed a certain suit in the Superior Court of the State of California, in and for the County of Los Angeles, No. 275092, wherein and whereby the said defendant sought to foreclose the chattel mortgage," you did foreclose your mortgage?

A. Yes, sir, I would not say that there was any fraud in it or deceitfulness, I did foreclose my mortgage, try to.

Q. Did you have any agreement with Smith that he would default?

A. No, I did not. I don't know anything about any such allegation as that.

Q. You never had any agreement with him that he should default?

A. No, sir, I did not.

Q. Then in Paragraph Fifteen on Page Seventeen he says, "That on or about the 19th day of April, 1929, the said defendant Woodruff with the said defendant Coleman acting as his agent and attorney and with the knowl-
511 edge and consent of defendant Smith, further acting fraudulently and deceitfully and for the purpose of cheating, swindling, defrauding and robbing plaintiff herein of the raw gems aforesaid and particularly described in Paragraph VI hereof, and knowing the said raw gems to have a value in excess of $160,000.00 at said time, did cause to be filed in the Superior Court of the County of Los Angeles, State of California, action No. 276469, wherein and whereby said defendant Woodruff filed suit against the Golden State Gem Company of California and the Golden State Gem Company of Nevada, and each of them as de-

fendants, on notes of the Golden State Gem Company of California given to one Jeddis & Company on or about January 20, 1928, for indebtedness of the said Golden State Gem Company of California incurred long prior thereto, one of which said notes was for $500.00 due in twelve months, upon which all had been paid but $183.15, and one of which notes was for $500.00 and was not due or payable until July of 1929, though the said suit was filed in April of 1929, and said note contained no acceleration clause and interest was payable at its maturity. That said defendant Woodruff alleged that he had purchased the said notes from Jeddis & Company, but failed to allege or disclose therein, and the facts were that the Golden State Gem Company of California had deposited as security for the payment of the said notes jewelry and merchandise valued by said defendants in excess of $2,000.00, which said collateral was then and is now and ever since April 9, 1929, has been in the possession of
512 defendants, as collateral security pledged for the payment of said notes, and the same was not foreclosed, returned or abandoned." You did have to pay the note?

A. I was endorser there in 1926.

Q. And they called on you to pay that note?

A. Yes, sir.

Q. You did pay them?

A. Yes, sir.

Q. And brought suit on them?

A. Yes, sir.

Q. Did you have any agreement with Smith about bringing that suit that he was to default therein?

A. No, sir, I did not.

Q. This petition alleges that you had $2,000.00 in collateral pledged as security for the payment of said notes, did you have any such collateral?

A. I did not have it. There was some such an amount in the bank Smith said, in stock he had purchased from some company some time previous and he was very lax in business matters, especially when he did not have the money to pay with, and he had not paid for this collateral at that time.

Q. And you never did get it?

A. No, sir.

Q. And you don't have it now?

A. No, I never did. Maybe it was some raw stones to be cut and polished.

Q. Do you know what happened to them?

A. No, I don't know. I suppose it all went back to the man who had not been paid for it.

Q. "That on or about the 19th day of April, 1929,
513 and at the time of filing of said action of Woodruff vs. Golden State Gem Company of California, et al. No. 276469 Superior Court, the said defendant J. Coleman acting for and in behalf of the said Leonard Woodruff and with his full knowledge and consent and at his direction and request and as part of the said conspiracy and scheme of the said defendants to obtain the property of the plaintiff herein, the said Coleman did at the said request, instance, direction and upon the said instructions of defendant Woodruff, swear and subscribe to an affidavit on the 19th day of April, 1929, that he was attorney for the said defendant Woodruff and that the said Golden State Gem Company of California and the Golden State Gem Company of Nevada were indebted to the plaintiff upon the said notes aforementioned, and that the payment of the same has not been secured by any mortgage or lien upon personal property or any pledge of personal property, which said affidavit was used as a basis with the said complaint aforementioned to attach the said property of plaintiff herein and as part of the said scheme of conspiracy to obtain the same for said Woodruff."

By Mr. Turnbull: We object to that, that record is here if the Court please and he cannot collaterally attack the record that he himself has introduced.

By Mr. Fischl:

Q. So far as you know do you know if there was an attachment suit gotten out in the case, where you sued?

A. I don't know anything about it.

Q. Do you know if there was one?

A. I presume so, I don't know.

514 Q. You turned that matter over to your attorney?

A. Yes, sir.

Q. Was there any agreement or conspiracy to sue out an attachment between you and Smith or Coleman?

A. No, sir.

Q. What instructions did you give to Coleman when you turned the suit over to him?

A. I was talking to Mrs. Buck and so much of the stock in trade was missing, I got sore about it and I told Coleman to collect all he could.

Q. And you don't know if he sued out an attachment in that matter or not?

A. No, sir.

Q. If he did that, was that done by any agreement between you and Smith and Coleman?

A. Smith would not have had anything to do with it.

Q. Did Smith have anything to do with it?

A. No, sir, he did not.

Q. Then he goes on to allege, "Since Coleman and Smith well knew that defendant Woodruff had in his possession and under his control collateral to the value of $2,000.00 pledged as security for the payment of the said notes, and which jewelry and merchandise had been obtained by the said defendant Woodruff and Coleman as security for the payment of the said notes, and no foreclosure proceedings of whatsoever nature had been had and the said merchandise and collateral was at that time and ever since said time as plaintiff is informed and believes and therefore alleges been held by the said Woodruff and his said agent and attorney defendant Coleman. That the said defendants further acting fraudulently and deceitfully and for the purposes hereinabove alleged, did conspire and scheme between themselves that the complaint and summons in the said last mentioned action should be served upon defendant Smith as President of the said Golden State Gem Company of California and as President of the Golden State Gem Company of Nevada, and that the said defendant Smith should default thereunder and should not answer the said complaint, or the said complaint and summons hereinbefore mentioned, for which this plaintiff is informed and believes and therefore alleges said defendant Smith was to receive a remuneration of $10,000.00 and certain oil leases in Oklahoma. That said defendants Woodruff and Coleman well knowing that the said raw gems aforementioned and described in Paragraph VI and deposited in the said United States Na-

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tional Bank as aforesaid were the property of plaintiff herein, and all thereof then in the possession of the said United States National Bank as aforesaid, to be attached under the said action on the 19th day of April, 1929." Is that true?

A. I never heard anything of it, no, sir.

Q. Any such collateral as mentioned in that paragraph never came into your possession?

A. No, sir.

Q. Then he goes on to say "that thereupon in pursuance of the said conspiracy and scheme and further acting fraudulently and deceitfully and with the intent to cheat, swindle, defraud and rob said plaintiff of said raw gems and all thereof, said defendant Smith did default in the said actions and did fail to answer or cause answer to be made in
516 the said actions to the said complaints and summons so served upon him by agreement as aforesaid, and the said defendant Woodruff and his attorney defendant Coleman under his direction did cause a default of the said Golden State Gem Company of California and the Golden State Gem Company of Nevada to be entered in the said last mentioned action on or about the 10th day of May, 1929, and did thereupon on or about the 10th day of May, 1929, cause judgment to be entered as prayed for in said complaint." Is that true?

A. None of it is true and more than that it is ridiculous.

Q. Did you have any agreement with Smith that Smith would default in that action?

A. No, sir. I never did.

Q. "That in said complaint in said action, the said defendant Woodruff with the said Coleman as Notary thereon did falsely swear to and verify the said complaint with the knowledge that the same was false and untrue and well knowing that he held security of the value of $2,000.00 for the payment of the said obligation of the said notes which have not been foreclosed upon—"

A. What notes?

Q. The Jeddis notes, he said you had security of $2,000.00 or collateral to the notes in the sum of $2,000.00, was that true or false?

A. That was false.

Q. And then he goes on to state, "And well knowing that the said obligation was not the obligation of the said Golden State Gem Company of Nevada nor plaintiff herein,
and well knowing that they had represented to plain-
617 tiff that the said obligations had been paid, and well knowing that the raw gems in the said United States National Bank at Eighth and Spring Streets, Los Angeles, as described in Paragraph VI hereof were the sole property of plaintiff herein, who alone was entitled to possession thereof, did allege in the said complaint that defendant Golden State Gem Company of Nevada had purchased the stock and assets of the Golden State Gem Company of California and had received benefits arising out of the execution and delivery of the aforesaid promissory notes and had agreed to assume the indebtedness due thereon and to pay the same; that demand had been made upon it for payment of the said sum of $183.15 and $536.25, but that while admitting it assumed liability thereon it had failed, neglected and refused to pay the same. That such allegation was known by defendants to be false and untrue and was made as a part of said scheme to obtain from plaintiff the said raw gems as herein alleged." Are those allegations true or false?

A. They are false.

Q. Now Mr. Woodruff when you first saw these stones you say they were in the warehouse, that is the time you examined them?

A. Yes, sir.

Q. What did you find?

A. Well at the Sheriff's sale you have ten or fifteen minutes to look them over. There were no windows and one light overhead and we looked in half or two-thirds of them maybe.

Q. What did you find in there?

A. We found some dark colored sapphires as they
518 called them and tried to hold them up to one light so we could see through them. We thought there might be some good ones but there was not.

Q. What was the purpose in holding them to the light?

A. You must see the light.

Q. Translucent?

A. Yes, sir.
Q. Did you find any zircons?
A. No, sir.
Q. Did you find any opals?
A. No, sir.
Q. Did you find any jade?
A. I saw what was supposed to be some.
Q. What was it?
A. A rock.
Q. This type of material that you did examine, what was it?
A. It was known by trade name as kuronzo.
Q. Did you see any gems or valuable material at all?
A. No, sir.
Q. Did you see any of those stones that were supposed to be cut?
A. No, sir, I did not see any at all, in fact there were some sacks I did not look in.
Q. You never examined it all?
A. No, sir.
Q. Sack by sack?
A. No, sir, I don't think so.
Q. And never have to this day?
A. No, sir, I have not.

519 Q. As far as you know what stuff you bought at the Sheriff's sale is now in the hands of the trustee in bankruptcy?
A. I know it is.
Q. Nothing has been taken out?
A. There were some samples taken out at the trial. I think from five to fifteen stones out of each sack. I don't know if they were ever put back or not.
Q. They were taken out by Mr. Heiser?
A. He was present and two or three others. I was not down there all the time, my son maybe was, I don't know.
Q. When you endorsed the Jeddis notes, you know the conditions under which you endorsed them?
A. What do you mean?
Q. Did you get any money out of the notes?
A. No, sir.

Q. Or from anyone else at that time?
A. No, sir.
Q. Why did you endorse the notes then?
A. For an accommodation.
Q. What was the condition that gave rise to the endorsement of the notes. I will ask you if there was a suit filed against the Golden State Gem Company about that time?
A. Yes, sir.
Q. I will ask you if these notes were given in satisfaction of that suit?
A. One was ready for judgment.
Q. These notes of January 20th, 1928, the purpose of their execution, that is what I am asking you.
A. They had a judgment and they had not executed on it and would not if I would pay so much right down.
Q. Did you do that?
A. Yes, sir.
521 Q. Did you sign the notes for the purpose of satisfying that suit?
A. Yes, sir.

By Mr. Fischl: We offer in evidence as our Exhibit KK the transcript of the proceedings in this case of Alphonse Jeddis and Frank L. Jeddis, co-partners doing business under the fictitious firm name and style of Alphonse Jeddis Company vs. Golden State Gem Company, incorporated, a corporation, filed in the Superior Court of the State of California in and for the County of Los Angeles, and is numbered 235,037 filed September 30, 1927.

By Mr. Turnbull: Other than for the purpose of fixing the date of the note and the date of that judgment, we object on the ground that the certified record including the judgment roll consisting of complaint, answer, demurrer to answer, minute order, amended answer, application for leave to file second amended answer with copy of second amended answer attached thereto, findings of fact and conclusions of law and the motion to strike, summons, notice of sustaining of demurrer, counter affidavit of J. A. Coleman, notice of motion to have case set for early trial, setting card, affidavit of rendering haves, notice of trial, affidavit of J. A. Cole-

man, order shortening time, etc., notice of motion for
521 leave to file second amended answer, exhibit withdrawal receipt, affidavit of service, execution with Sheriff's return thereon, are immaterial in this matter and is only offered for the purpose of incumbering the record. As far as the exhibit is concerned as to fixing the date of the note and the date of the judgment, that is all right. The Jeddis notes are here and if he wants to show they were renewal of previous notes that is all right, but why put all this record which happened back in 1927 before these gems came to California, if there are any findings in there or anything that affects Heiser in any way, I did not see it, it is entirely remote and has nothing to do with this case at all. It will only incumber the record and counsel can't give your Honor a legitimate reason for putting this in evidence.

By Mr. Fischl: If we had not brought the whole transcript they would have objected to it. The complaint and the judgment and the proceedings after judgment, we think are pertinent and we offer them in evidence. I offer the complaint, findings of fact and conclusions of law and the judgment, strike the findings, that is immaterial, the Sheriff's execution, the Sheriff's return on execution.

522 By the Court: Those are admitted, all right, go ahead.

By Mr. Fischl:

Q. Mr. Woodruff, in a statement made by Heiser with reference to this material, which he afterwards brought to Los Angeles, please state what if anything he said, if anything in reference to the source of that material.

A. Nothing further than he was mining it in Australia, and this was some of the stuff that came from the mine. It was some of the same kind of stuff he sent to France and Germany and had some conversation about England. I don't know if he was taking any of it to England or not.

Q. Did he tell you about this stuff he returned to this country?

A. No, I do not remember but I assumed his mine was in operation.

Q. Did he tell you when he brought it over here?
A. No, sir.
Q. When did you next see Heiser after he left in 1928 supposedly to return to go to Australia?
A. In Judge Cosgrove's court in June of 1939.
Q. Eleven years after that?
A. Yes, sir.
Q. Now during that time did you ever hear from him?
A. No, I never.
Q. Did you learn when he came back from Europe?
A. No, I found out later the approximate time, I don't know yet definitely.
Q. Mr. Woodruff, he sued you in another case before this one?
A. Yes, sir.

523 By Mr. Turnbull: We object to that as not the best evidence.

By Mr. Fischl: We offer in evidence at this time a certified copy of the complaint in 5587-J, United States District Court of the Southern District of California as our Exhibit "LL." We offer in evidence a certified copy of the order of dismissal of that suit as our Exhibit "MM."

By Mr. Turnbull: We object to it as incompetent in this case and further it is an attempt to have this Court pass upon something that is res adjudicata, the subject matter of the judgment.

By the Court: Overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. Mr. Woodruff, did you know what became of the first case?

By Mr. Turnbull: We object to that on the ground the record is the best evidence and the record shows for itself.

By Mr. Fischl:

Q. Do you know?
A. No, sir, I know what Fitspatrick told me.
Q. You were not present in Court?

A. No, sir.

Q. Your attorney did inform you?

A. Yes, sir.

Q. Where were you, Mr. Woodruff, on the 31st day of January, 1939, were you in Los Angeles?

A. No, sir.

Q. When did you return to Los Angeles if you
524 know?

A. Some time before my son's birthday on the 27th day of February, 1939.

Q. When did you learn they had some kind of purported service on you of this summons during the time you were absent from your home?

By Mr. Turnbull: We object to that, that is the subject matter that has been passed upon and the Court has found he was served and was served that day and that is just as much res adjudicata as the subject matter of this action, and it is a collateral attack which cannot be properly made except in the Court that entered the judgment; that Court has heretofore determined the summons was good and inquired into when he was served: he raised the question that he was not served and that matter has been determined and this is a collateral attack upon the subject matter of that suit and that judgment.

By Mr. Fischl: The purpose of it is to show diligence on the part of the debtor, I think this Court would probably be interested in knowing if he was diligent at the time, but not for the purpose of showing he was properly served or not served.

By the Court: I think this Court is bound by that, we cannot go back of that and I will sustain the objection.

525 By Mr. Fischl: That is all.

Cross Examination.

By Mr. Turnbull:

Q. The Sheriff says you obtained and bought in the gems for $1,000.00. That was in the case of Leonard Woodruff vs. the Golden State Gem Company, the transcript of which has been offered in Court here?

A. Yes, sir, the only one I know of.

By Mr. Turnbull: That is all.

Witness excused.

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526 MRS. WILLIE MAE WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.
A. Willie Mae Woodruff.
Q. Where do you live?
A. 902 E. Street, Northwest.
Q. Ardmore?
A. Yes, sir.
Q. Are you the wife of the debtor, Leonard J. Woodruff?
A. I am.
Q. How long have you and Mr. Woodruff been married?
A. Twenty-eight years.
Q. You have three children I believe?
A. Yes, sir.
Q. Do you know Mr. M. E. Heiser?
A. I do.
Q. M. E. Heiser, the judgment creditor here?
A. Yes, sir.
Q. When did you first get acquainted with Mr. Heiser, Mrs. Woodruff?
A. In 1928.
Q. 1928?
A. Yes, sir.
Q. What was the occasion of your getting acquainted with him?
A. He came to the house with Mr. Smith.
Q. Where were you living then?
A. In Los Angeles at 2446 Inverness Street, City
527 of Los Angeles, California.
Q. What was his purpose in coming to your house, if you know?

A. To borrow money from my husband.

Q. Did you hear any conversation between Mr. Heiser and Mr. Smith and Mr. Woodruff?

A. Yes, sir.

Q. How many times did Mr. Heiser come to your home?

A. Well, I would not know, a number of times.

Q. Did he always come in the home?

A. Yes, sir, and when he would come in—on a few occasions he did not come in, Mr. Woodruff was too ill to see him.

Q. Was Mr. Woodruff home ill at the time?

A. Yes, sir.

Q. Did he have anything with him when he came to the house?

A. He had one Australian live bear in the car and some stones.

Q. What was he doing with the teddy bear?

A. Trying to sell them.

Q. Did you hear any conversation between your husband and Mr. Heiser and Mr. Smith?

A. Yes, sir.

Q. What were those conversations about?

By Mr. Turnbull: By this evidence he is seeking to collaterally attack the final judgment of the United States District Court of the Southern District of California and the final judgment rendered by the Circuit Court of the Ninth Circuit and this evidence is not competent in any way, and we object to it, if the Court please.

528 By the Court: Go ahead.

By Mr. Turnbull: Exception.

A. He was talking to him about borrowing money from my husband.

By Mr. Fischl:

Q. You remember anything that was said there?

A. Mr. Heiser said he had a lot of valuable mines in Australia and wanted to go in with Mr. Smith and form a new corporation and if Smith would get hold of cash enough to form the corporation they could make a lot of money.

and my husband, he had already let Mr. Smith have all the money he could let him have so they kept coming up and talking and Smith said, "If I could get the money and go in with Heiser, I can pay you back all I owe you in a short time," and my husband finally let them have $10,000.00 and Heiser agreed to ship some rough stones or sapphires, as he called them, down to Smith that Heiser had up at Los Angeles he claimed, and they had some sort of agreement that my husband's brother would go with Heiser to Australia and that was all that he would let him have.

Q. Did you hear Mr. Heiser and Mr. Smith and Mr. Woodruff agree what was to be done with that stuff, these stones or jewelry or gems or whatever it was?

A. It was to be sent to the Golden State Gem Company and put some of it in the window and have the stone cutters to start cutting it.

Q. Any discussion as to how much he was to put in the window?

A. Well, I do not remember but it was a large
529 amount.

Q. What did Mr. Heiser say in that connection?

A. He said he thought it would help Smith's business if he could get the rough stones in the windows and with his help he could make Smith worth several million dollars in a short time.

Q. What was said about going to Australia?

A. He first wanted my husband to go, he said that he could go and see them, and Mr. Woodruff said he could not make the trip but his brother might go with him.

Q. Who was his brother?

A. Herman Woodruff.

Q. What did Herman Woodruff say about that?

A. He said it would be all right and he said he had to go back to San Francisco and in about two weeks he could go, and he was to come back to Los Angeles and go from there.

Q. When was that with reference to the time your husband let them have $10,000.00?

A. Not very long after he loaned them the $10,000.00 and they wanted more money.

Q. Did you hear any discussion about the organization of the Company?

A. Yes, sir.
Q. Who was going to do that?
A. Mr. Smith and Mr. Heiser.
Q. When you and your husband left Los Angeles after that, where did you go?
A. We went to Oregon right after that.
Q. How long were you gone?
A. We came back the latter part of October.
530 Q. Then how long did you stay at home in California?
A. A week or ten days.
Q. How long, where did you go then?
A. We came here to Oklahoma.
Q. How long did you stay here?
A. Until in the spring.
Q. Then where did you go?
A. To Los Angeles.
Q. What time of the year was that?
A. The latter part of March.
Q. After you went back to Los Angeles, did you see Mr. Heiser?
A. No, sir.
Q. Or Mr. Smith?
A. Yes, sir.
Q. Where did you see him?
A. At his place of business.
Q. How did you happen to go down there?
A. We went down there several times trying to see him.
Q. Who did?
A. My husband and myself.
Q. And what did you find there?
A. Well, we found a lot of this stuff had disappeared.
Q. Were you familiar with the stock?
A. Yes, I had seen a lot of it.
Q. Could you tell the stock was missing?
A. Yes, sir.
Q. Did you discuss that with anyone at the time?
A. Yes, with Mr. Smith's sister.
Q. Who was that?
531 A. Mrs. Buck.
Q. What did she claim to have done with it?
A. She stayed in the store all the time.

Q. What did she tell you though about the stock?

A. Said she was sorry about Calvin, said they would lose all their stock and she said she wished Mr. Woodruff would do something to protect the mortgage.

Q. Why did she tell you that, do you know why she told you that?

A. Well, she said Heiser had not lived up to his purported contract.

By Mr. Turnbull: We object to that, if the Court please.

By the Court: Sustained.

By Mr. Fischl:

Q. Now Mrs. Woodruff, you remember an occasion when certain materials, sacks were taken out of your home and when it was placed in your home?

A. I don't remember the exact date.

Q. You remember it being placed there?

A. Yes, sir.

Q. You know how much that was, how much material?

A. A large amount, I think around thirty-five or thirty-six sacks.

Q. When it was put in the home where was it placed?

A. In a small room.

Q. How long did it remain there?

A. Until Mr. Heiser swore out a complaint against Mr. Woodruff that he had disposed of it and we had to take it to the District Attorney's office.

Q. When was that?

A. In 1932.

532 Q. Where was Mr. Woodruff at the time?

A. In the hospital.

Q. Did you have anything to do with taking it down there?

A. Yes, sir.

Q. What was that?

A. I got a truck and had three men put it on the truck and my son and I followed it down there and met Mr. Cobb and Mr. Hornsby there.

Q. Who was Mr. Cobb and Mr. Hornsby?

A. Mr. Smith's attorneys.

Q. What did you do down there?

A. Went to the District Attorney's office.

Q. Was Mr. Heiser there?

A. Yes, sir, and the District Attorney said Mr. Heiser had out a complaint that Mr. Woodruff had sold the stones and I told him they were brought there after a Sheriff's sale and I told them Mr. Woodruff wanted the Court to take them and put them some place and keep them until the dispute was over.

Q. Then what was done?

A. The District Attorney said for Mr. Heiser to examine the stones and Mr. Cobb and Mr. Hornsby went to the truck.

Q. Were you there?

A. Yes, sir, and my son Howard and Mr. Heiser got up on the truck and put his hands in the bottom and turned them over and over and I asked him if it was all there and I told him that there was one sack that sold that we did not get, it would not be there, and after he examined them all, I said, "Are those the ones you claimed"? And he said, "These are the stones all right," and I said, "Are they all there?" And he said, "Yes, they are all there," he said, "I could not be sure as to the weight," and I said, "We will take it down and weigh them then", and Mr. Heiser got on the truck and went to the storage company.

533

Q. Who did?

A. One of the attorneys, it might have been Mr. Cobb and Howard and I and the truck driver.

Q. What warehouse was that?

A. Foleys, I believe.

Q. Where was it located, do you remember?

A. Seems like it was on South San Pedro.

Q. What took place there?

A. As they brought each sack in Mr. Heiser examined them again and made a thorough examination and he said there was really more there than he thought there should be, and I said, "You see this is your stuff and it is all here", and he said he was perfectly satisfied.

Q. Then what happened?

A. They took it in the storage room and turned the key over to the storage company.

Q. Was it ever in your home after that time?

A. No, sir.
Q. Any of it taken out since then?
A. Not to my knowledge.
Q. Or were any taken out in your home?
A. No, sir.
Q. The same stuff was put in the Foley Warehouse, that was the same stuff that was put in your home?
A. It was.
Q. And all of the would be sapphires, stones and so forth that were brought to your home were placed in the Foley Warehouse?
A. Yes, sir.

By Mr. Fischl: That is all.

Cross Examination.

534 By Mr. Turnbull:

Q. Who put it in the warehouse that day, was it put in in the name of Cobb?
A. Yes.
Q. Mr. Cobb was there when it was put in the warehouse?
A. He signed the papers.
Q. You present when the depositions were taken at Mr. Cobb's office?
A. No, I was not.
Q. Don't you know he testified as shown by the deposition on that occasion that Mr. Heiser said all of his stuff was not there?
A. I was not there when Mr. Cobb testified, I never met Mr. Cobb while I was in Los Angeles.

By Mr. Turnbull: That is all.

Witness excused.

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535 HERMAN WOODRUFF, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.

A. Herman Woodruff.
Q. Where do you live, Mr. Woodruff?
A. Northwest of Healdton.
Q. In Carter County, Oklahoma?
A. Yes, sir.
Q. Are you a brother of Leonard Woodruff?
A. Yes, sir.
Q. Were you in California in July and August of 1958?
A. Yes, sir.
Q. What were you doing out there if you remember?
A. My mother and I had some business on matters concerning my father's estate.
Q. When did you go out there?
A. I think in July, I was there through August.
Q. Do you know M. E. Heiser?
A. Yes, sir.
Q. And Calvin Smith?
A. Yes, sir.
Q. Did you see them while you were out there?
A. Numbers of times.
Q. Where did you see them?
A. They would come to my brother's store and the antique place and my brother's residence.
Q. How many times would you say you saw them?
536 A. Four or five times a week.
Q. Did you hear any conversation between them and your brother?
A. Yes, sir.
Q. You were there and participated in some of those conversations?
A. Yes, sir.
Q. What about?

By Mr. Turnbull: We object to that, the same objection to this witness' testimony as made to others on the ground it is an attempt to collaterally attack a judgment that is a final judgment, and I presume this witness' testimony will go to the same facts and circumstances as testified by other witnesses, which is to a proposition that cannot be legally raised against this judgment.

By the Court: Proceed, overruled.

By Mr. Turnbull: Exception.

By Mr. Fischl:

Q. What was the conversation about?

A. Well my brother had had dealings with Smith loaning him money and Mr. Heiser brought up the mines and wanted my brother to go and furnish the cash to open the mines.

Q. Was any agreement reached regarding that in any conversation you heard?

A. My brother advised Smith, he had first advanced Smith some money and advanced him $10,000.00 more and Smith said if he could open this store or open up a store, something about it and handle this stuff that Heiser
537 had he could make a lot of money.

Q. What was that?

A. Well, some stones he was going to ship down and have Smith re-cut and put on the market and he said they were worth a large sum of money, and said he had the corner on that kind of business, and Smith and he would organize a new company and would have a lot of money right away, and through that manner Smith figured he could pay my brother.

Q. Had they already organized the Company?

A. Well they said they had it in the making between Heiser and Smith, I don't know if a Company was then organized or not.

Q. Was anything said about the value of this stuff, these stones and things that Heiser had?

A. Well he said it was very valuable, he put a value on it of forty thousand dollars, forty to fifty thousand dollars, and they were uncut then.

Q. And he was to ship them to Smith?

A. Yes, sir, he wanted to put it in my brother's possession and he would not accept it.

Q. What did Heiser say about that?

A. Well he insisted on that.

Q. What did he say?

A. He said he would send it down to Smith and wanted my brother to be in the new company and be a Director or President and he refused to do that, and refused to go into the Company or accept the rocks.

Q. Was any further agreement made there to which you were a party or present?

538 A. One time Heiser had no car and Smith did and he would bring Heiser up. At one time, in the plans, we met several times and discussed it and a man by the name of Gene came in there and Heiser insulted him and it looked like Gene would throw him out, and McClosky said he had things you could see, he said you could see what he was buying and Heiser suggested that Leonard go and see the mines, and my brother said he was not able, he was practically in bed at that time, and Heiser said or suggested that he go and when he said he couldn't he suggested that you send your brother from Oklahoma here, he said he knows shovels and dredges and things of that kind, and he suggested that I go over there and go in the mining business, he said I would make more money than I could drilling wells, he said wells in Oklahoma, and my brother said he would not do anything about it, if I agreed to go and would take three or four months to make the trip he would wait until I came back before he advanced Smith any more money, he said it would all depend on my report.

Q. Did you agree to go?

A. Yes, sir, and we were going to leave within two or three weeks. Heiser wanted to leave right away and I said I had some business here to settle up, and in two weeks I will be ready, that was the last time I ever saw Heiser, and I stayed two weeks longer and Heiser never showed up any more, I don't remember if I saw Smith again or not, I know I never saw him over once, he never came to the house for there were several boys around the store asking where Smith was.

539 Q. And Heiser agreed he would be back in two or three weeks ready to go?

A. Yes, sir, he said his family lived there and he was going to ship the rocks down there to Smith and Smith would start re-cutting them so he could have money coming in to this Company.

Q. What did he say about going to Australia?

A. Well, we agreed to meet there and go.

Q. He agreed to come back to Los Angeles?

A. Yes, sir.

Q. And you waited for him?

A. Yes, sir, waited longer than that time and he never showed up.

Q. And you have never seen him since?

A. In Court, yes, sir, in 1939, the first time I saw him after that.

Q. Did he ever get in contact with you after that?

A. No, he never did.

Q. What did you do after you waited around and he never did show up?

A. I waited a week or ten days after he had agreed to show up and came on back to Oklahoma.

Q. What did he have with him that he was trying to sell at that time?

A. He had some rocks that were not polished?

Q. Anything else?

A. A few diamonds. He said they would be diamonds in Australia, some kind of stone.

Q. Did he have any animals?

A. Well, he had a teddy bear he said he was selling to the actors and tried to sell me one. He sold one actress one, for $750.00. They were two or three feet long, he called them teddy bears.

540 By Mr. Fischl: That is all.

Cross Examination.

By Mr. Turnbull:

Q. You saw Mr. Heiser when he testified in 1939 in the case of Heiser vs. Woodruff?

A. In the Federal Court, yes.

Q. You did not testify?

A. No.

Q. You are a creditor with a claim for fourteen thousand dollars in this same estate, in this Woodruff estate?

A. Yes, sir.

By Mr. Turnbull: That is all.

Witness excused.

By Mr. Fischl: I would like to inquire of Mr. Turnbull if the claimant Mr. Heiser is here.

By Mr. Turnbull: No, he is not here, his deposition is here and I thought it had been offered.

By Mr. Fischl: Is the claimant Heiser in the State of Oklahoma?

By Mr. Turnbull: If he is in the State of Oklahoma I do not know it. My information he was on August 26th, 27th, 28th, when his deposition was taken in the matter, the original of which is now before your Honor.

541 By Mr. Fischl: For the purpose of impeachment we offer in evidence the deposition of M. E. Heiser.

By the Court: Very well.

H. D. McCollom, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. State your name to the Court.
A. H. D. McCollom.
Q. Where do you live?
A. In Ardmore.
Q. How long have you lived here?
A. Thirty-five years.
Q. What is your business?
A. I am an accountant.
Q. Mr. McCollom, with what bank have you been connected?
A. The First National Bank.
Q. You ever had experience in comparing signatures to determine if they were genuine?
A. Yes, sir.
Q. How long have you been engaged in that work?
A. Fourteen years and in the banking business I studied handwriting all my life.

542 Q. How many times have you testified in handwriting cases?
A. Several hundred times.
Q. Mr. McCollom, I hand you the proof of unsecured debt filed here by the claimant Heiser, and the supplemental proof of claim of M. E. Heiser filed in August of 1940. I show you the proof of unsecured debt of M. E. Heiser sworn

to before a Notary Public and the letter of the attorney on the back sworn to and the two signatures of M. E. Heiser at the end of the supplemental claim, have you examined those signatures?

A. I have.

Q. I show you the Debtor's Exhibit "3" to the deposition of M. E. Heiser, which has the signature of M. E. Heiser at the end of it, have you compared that signature with the ones on the claim?

A. Yes, sir.

Q. The signatures on the claim the same as the signature to the deposition?

By Mr. Turnbull: We object to this on the ground we are taken absolutely by legal surprise, no claim that the claim or supplemental claim was not signed by M. E. Heiser, we had no opportunity until this minute to be informed as to this and over a year has expired since the claim was made, and we are entitled to know that Paul Joseph, who placed his seal thereon was not telling the truth. The claim was made at the last minute since we have been here over a period of years and there has never been a question
543 as to his signature, that has never been raised, we are taken by actual surprise. This is the first time we had any information that this Notary had falsified his signature and seal. If they are claiming that we are entitled to know it instead of waiting until the last witness and until this witness was called I had no idea such a claim was made, and we are now at a loss to understand it, and we could not refute it unless we rest on the plain signature of the Notary.

By Mr. Fischl: The purpose of this testimony is just exactly the opposite to what his inference leads him to believe. We say the signatures on the claim are genuine signatures, we think they are and we are introducing them for the purpose of proving the other signatures are genuine, that is the only purpose and there are attached to this deposition some twelve or fourteen instruments signed by Heiser.

By Mr. Turnbull: I thought he had another idea, if he is trying to use these signatures as genuine signatures, I

am wrong. Then you are not making an attack on the claim for the reason it was not signed by Heiser?

544 By Mr. Fischl: We are using that as a genuine signature.

By Mr. Turnbull: I will withdraw the objection.

By Mr. Fischl:

Q. Mr. McCollom, I show you the signature of M. E. Heiser on the original claim and the supplemental claim and also on the back of Debtor's Exhibit "6", which comprises five different certificates of stock, I will ask you if those signatures subscribed to those different certificates of stock are the same signatures as the one who signed this claim and supplemental claim.

A. Yes, sir.

Q. I show you the signature of M. E. Heiser to this instrument, is that the same as the one who signed the claim, the genuine signature here?

A. Yes, sir.

Q. The signature to Objector's Exhibit "10", I will ask you if that signature is the same or was made by the same individual who signed this claim in this case?

A. Yes, sir.

Q. And the signature to Exhibit "11", is that the same, the same man sign it who signed this claim?

A. Yes, sir.

Q. You have examined all the signatures?

A. Yes, sir.

Q. Exhibit "12", is that the signature of the man who signed this claim and supplemental claim?

A. Yes, sir.

Q. You have compared them all?

A. Yes, sir.

Q. And Exhibit "13", is that a genuine signature of M. E. Heiser?

A. Yes, sir.

545 By Mr. Fischl: If the Court please, we offer all the depositions and these exhibits attached to the depositions in evidence.

By Mr. Turnbull: It being in documentary form I think you should offer it. Do you offer the deposition?

By Mr. Fischl: For the purpose of impeachment I offer the deposition of M. E. Heiser and the documents attached thereto.

By the Court: All right, let them go in.

By Mr. Fischl: Let the record show Mr. P. M. Jackson, the Trustee is here and Mr. Turnbull is anxious to conclude this hearing today if possible. We have here in Ardmore the material which was stored in the Colyear Van and Storage Company in Los Angeles which has been brought here by the Trustee under the direction of this Court, and we ask the Court to examine it. In the first place, and in the second place we want to ask the Court to direct the Trustee to have it examined by experts and appraised and in the third place we received from a New York concern a request for samples of this material for the purpose of determining whether or not they desired to buy it. The claimant M. E. Heiser testified in the hearing before Judge Cosgrove, this material had more value during war time
546 than any other time and if it has any particular value at this time we think it is the duty of the Trustee to report that back to the Court, and if it is needed for some war purpose we think it should be available for that purpose, and we offer the copies of the letters of M. E. Poppolow of New York City, and we want to ask the Court to direct the Trustee to send samples of this material up there for the purpose of having it examined.

By Mr. Turnbull: You are offering the correspondence between you and the man in New York?

By Mr. Fischl: No, I am not offering it

By Mr. Turnbull: Over a year ago I told Trustee's counsel the value of this property was of a greater value then than any other time and at that time they could get a good price for it and suggested to him that the property be put on the market and if it went into the manufacture of synthetic bearings they might get a good price for it, and the best price we could get was some ten or fifteen

thousand dollars, at that time they could have disposed of this property.

By the Court: On the sale of any property like that, that is a matter for the Trustee to look into and file an application for authority to sell it and I will give notice to the creditors.

547 By Mr. Fischl: In response to counsel's statement I offer in evidence a telegram I got from him in September, 1941, as part of the objection to the claim.

By Mr. Turnbull: Counsel has stated to me that he was not offering that except in the general administration of the estate, and now he says he is going into the objection to the claim. He is now trying to make it appear that this is the same property that Heiser had in his hands originally, and all the property that he then had. My idea is to aid the administration of the estate and when I aiding the Trustee, which I intend to do, I am assisting in the general administration of the estate.

By the Court: The point is as to the value of the property at that time.

By Mr. Fischl: That is true. One of Mr. Heiser's witnesses said it was worth seventy-five or eighty thousand dollars.

By Mr. Turnbull: Yes, and much of this stuff was taken out of those sacks too.

By the Court: You can show the value of the material in the hands of the Trustee at this time. Of course you would have to show what the same class of material was worth ten years ago.

By Mr. Turnbull: I think this identical property is worth more than it was ten years ago.

548 By Mr. Fischl: This is not property that the value can be proven readily by everyone, but we have this inquiry and the Trustee can determine the value of it and also get some appraisers to come to Ardmore and examine this stuff.

By Mr. Turnbull: We have taken the depositions of people who have examined it and I thought that was sufficient.

P. M. JACKSON, called as a witness, having been duly sworn as required by law, testified as follows:

Direct Examination.

By Mr. Fischl:

Q. Your name is P. M. Jackson?
A. It is.
Q. You are the Trustee in this case?
A. Yes, sir.
Q. Were you present in Court at Purcell when Judge Clark made an order for you to remove this material to Ardmore?
A. Yes, sir.
Q. Did you proceed to send out there after it?
A. Yes, sir.
Q. Is that material now in Ardmore?
A. Yes, sir.
Q. When did it reach Ardmore?
A. Yesterday.
549 Q. The 26th of July?
A. Yes, sir.
Q. Did you get it here as quickly as you could under the circumstances?
A. I think I did.

By Mr. Fischl: Now we ask the Court for an order appointing appraisers to appraise this property and copies of the appraisement to be furnished opposing counsel and interrogatories to be propounded to the witness if counsel so desires, and we desire to make it then a part of our objections to this claim.

By Mr. Turnbull: For the purpose of the general administration of the estate I have no objection but for the purpose of making any evidence in this case competent against the claim of my client in this case would be incompetent in my opinion. In other words, my position is that

that is a final and binding judgment and any evidence adduced here would be incompetent for the purpose of collaterally attacking it, on the question of value I don't think the appraisement or the appraiser's report would be evidence, you would have to have the expert here or his testimony in the form of deposition, for that reason, except for the purpose of sale, I don't see where that would be beneficial.

550 By Mr. Fischl: Unless we reduce it to interrogatories. I thought the Court would be better satisfied in view of the fact there was so much discrepancy in the value in the testimony before Judge Cosgrove.

By Mr. Turnbull: We further object to the Court appointing appraisers to fix a value on this material on the ground that for the Court to select appraisers to give evidence before the Court would be contrary to law. The issue as to the value has been tried heretofore and determined and this Court is without jurisdiction now to select local appraisers to try that matter which has heretofore been tried and is therefore, so far as this Court is concerned, a settled matter.

By the Court: If I should appoint appraisers and they go out and appraise this property and make a report of their appraisement that would not be evidence that I could consider in this matter.

By Mr. Fischl: That is true.

By the Court: Therefore what is the use of doing that.

By Mr. Fischl: We will take the depositions of these witnesses.

By the Court: Under my former holding you are entitled to subpoena them in or take their deposition as to the value of this material, but I don't see any use, until the Trustee gets ready to sell it, to have it appraised, I can't see
551 any reason to appoint appraisers for the purpose of this hearing at all. On the question of whether you want to continue this hearing to take depositions on that point, I might consider that later on.

By Mr. Fischl: We offer in evidence as our Exhibit

"XX" the testimony of the claimant M. E. Heiser appearing at Pages 11 to 44 and 148 to 151 of the Reporter's Transcript of proceedings In Re: Objection to claim of M. E. Heiser, No. 13,393-J before Hon. Earl E. Moss, Referee, which was taken on Wednesday, April 14th, 1932, and Friday, April 22nd, 1932.

By Mr. Turnbull: We make the same general objection that the evidence is incompetent, irrelevant and immaterial and cannot in any way affect a valid and binding judgment.

By the Court: Overruled.

By Mr. Fischl: This morning we introduced as our Exhibit "AA" the Clerk's minutes made on March 20th, 1939, which we now make as part of our objection to this claim.

By Mr. Turnbull: I think I made my objection at the time you offered the exhibit.

By Mr. Fischl: Yes, sir, I believe so. We offer as our Exhibit "OO" a certified copy of part of the deposition of M. E. Heiser given in the case of Morris Heiser, plaintiff, vs. Maudie Jane Graves, No. 238,348, in the Superior Court of the State of California in and for the City and
552 County of San Francisco, also a certified copy of the first amended complaint in that case and a certified copy of the amendment to answer to first amended complaint.

By Mr. Turnbull: All after the transaction of the subject matter in our case and it is immaterial to any issue in this case, and is a further attempt to collaterally attack the final judgment and has nothing to do with this matter. This action was filed in 1934 against someone else, somewhere else, and is in violation of the rule of full faith and credit that should be given to the judgment of a Court of competent jurisdiction.

By Mr. Fischl: It is for the purpose of impeachment only and the pleadings are to show what the testimony was about.

By the Court: Overrule the objection.

By Mr. Turnbull: Exception.

By Mr. Fischl: We offer in evidence as our Exhibit "PP" a certified copy of a petition accompanying application to sell and issue stock and a letter addressed to the Commissioners of the Corporation from International Gems dated October 16th, 1937, withdrawing said application. This exhibit is offered for the purpose only of identifying
353 the next exhibit, which is a transcript of testimony of Heiser in which the Exhibit "PP" forms the basis.

By Mr. Turnbull: We object to it on the ground that the application appears for the purpose of issuing stock in June of 1937 and is an attempt to impeach a final judgment.

By the Court: Overruled.

By Mr. Fischl: We offer in evidence as our Exhibit "RR" the testimony of M. E. Heiser appearing at Pages 122, 196, 205, 224, 230 and 261. It begins on those pages and continues over for some pages thereafter. In the transcript in the matter of the investigation and examination of International Gems before the Department of Investment Division of Corporations in the State of California, it is part of a deposition and hearing reported by Claire E. Cone.

By Mr. Turnbull: You are not offering that part of the testimony given by other witnesses?

By Mr. Fischl: Only the Heiser testimony shown therein. And we offer Pages 109, 110 and 111, 112 and 113 in evidence.

By Mr. Turnbull: If the Court please, we object to it on the grounds heretofore stated.

By the Court: Overruled.

By Mr. Turnbull: Exception.

554 By Mr. Fischl: Now if the Court please, we offer in evidence in support of our objection against the claim of Heiser, all the testimony of M. E. Heiser appearing in the transcript in the case before Judge Cosgrove on the question of the value of the supposed gems which has heretofore been identified as Objector's Exhibit "DD." That is our Exhibit "2," if the Court please. Now we offer in evidence as our Exhibit "SS" a certified copy of the Ar-

ticles of Incorporation of the Golden State Gem Company of Nevada. As our Exhibit "TT," we offer in evidence the certified copy of the application of the Golden State Gem Company of Nevada for permission to do business in the State of California as a corporation. We offer in evidence as our Exhibit "UU" a duly certified copy of summary of capital and shares of the Heiser Burmah Sapphires Limited, properly certified to on the 9th day of May, 1941. If the Court please, we offer in evidence our Exhibit "VV," the third page of the exhibit is an affidavit for subpoena duces tecum and then further over in the instrument Notice of Hearing Application to Review Referee's Order, further on over there is an order fixing date for hearing objec-
555 tion to claim of M. E. Heiser and then the judgment of dismissal and the notice to produce, the affidavit for two subpoenas duces tecum, the notice of hearing on objection to claim of M. E. Heiser, objection to claim of M. E. Heiser and a list of the creditors of the Golden State Gem Company, and a letter which is the third to the last page of this exhibit from the law office of McFarland and Beveridge, Los Angeles, California, to Hon. Earl E. Moss, Referee in Bankruptcy, Los Angeles, California. We then offer in evidence as our Exhibit "WW," certificate of the clerk in the United States District Court for the Southern District of California, Central Division, and it says, "Certificate In Re: Claim of M. E. Heiser." We offer in evidence three letters from D. B. Edwards, Executive of the Department of Commerce of Australia in which he recites he was the executive together with the transmittals which are attached to the exhibit, as Exhibit XX.

By Mr. Turnbull: We object to that, if the Court please as the rankest hearsay, further on the ground it is an attempt to show a state of facts contrary to that found by the United States District Court for the State of California in the case of Heiser vs. Woodruff.

556 By the Court: I can't see where that would be competent in evidence. Objection sustained.

By Mr. Fischl: We would like to ask permission to get this information by written interrogatories, I don't know if we can or not, however we tender these letters in evi-

dence. We offer in evidence as our Exhibit "YY" the complaint for injunctive relief and to prevent multiplicity of suits filed in the District Court of the United States for the Southern District of Oklahoma in the case of M. E. Heiser vs. Willie May Woodruff, et al., filed December 30th, 1940, and is 426 Civil. We offer not only the complaint but the temporary injunction, separate answer of the defendant, Leonard J. Woodruff, findings of fact and conclusions of law.

By Mr. Turnbull: We object to that on the ground the finding in that case and the judgment in that case expressly holds that the Court is not determining any issue that was now pending in this Court in the matter of the objection to these claims. He was not enjoining the parties but leaves your Honor to determine the matter as you find it on the law and the facts.

By the Court: That is the record made on the injunction suit.

557 By Mr. Fischl: We don't claim the judgment has any effect here at all only to show the conduct of the parties.

By the Court: The objection is sustained as to that.

By Mr. Fischl: We tender it as part of the record in this case.

We offer in evidence the deposition of Louis Oreck appearing in the depositions reported by C. W. McClain and H. A. Dewing in the matter of Leonard J. Woodruff, Bankrupt, In Bankruptcy No. 7623, and appears on Pages 100 to 112 inclusive of that deposition. That is offered as our Exhibit "ZZ". we offer in evidence the deposition of Irving Oreck given before Judge Cosgrove which is part of deposition "DD." We now offer in evidence the deposition of D. K. Stern. Also the deposition of Jefferson J. Graves taken August 29th, 1941, the deposition of D. K. Stern being taken August 28th, 1941, and also the deposition of E. A. Lobree taken October 7th, 1941. We also offer the deposition of J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt and Norman R. Dunn.

By Mr. Turnbull: To which the defendant Heiser objects on the ground it doesn't tend to prove any matter in this case and is an attempt to collaterally attack a valid and binding judgment rendered by a Court of competent jurisdiction and also as shown by our objections heretofore made to this character of testimony.

By the Court: Very well, overruled.

By Mr. Fischl: We would like to inquire of Mr. Turnbull if he would admit his client has never been present at any proceeding in this case in any of the counties of Oklahoma in person.

By Mr. Turnbull: He testified in person in the California Courts on the original case and the subsequent hearings and he appeared by counsel in Oklahoma but not in person.

By Mr. Fischl: Very well. Will counsel stipulate there was a hearing in this Court on the 11th day of August, 1939, on the motion of the claimant M. E. Heiser to dismiss for want of jurisdiction?

By Mr. Turnbull: As shown by the record there was such a proceeding.

By Mr. Fischl: Will counsel stipulate there was a hearing in this Court on the 26th day of August, 1940, on the petition for arrangements.

By Mr. Turnbull: There was no such hearing that I know of.

By Mr. Fischl: We offer in evidence a copy of the record of August 26th, 1940, in this case, a copy of the record in this proceeding. Counsel surely will stipulate that the matter was set for hearing on the various claims on November 15th, 1940, in this Court at this Court House and hearings were had on various claims from November 15th to November 27th, 1940.

By Mr. Turnbull: On November 18th a meeting was called by the Referee, Hon. George Clark, and thereafter a meeting was held on November 18th and adjourned to the 26th, and on the 27th it was adjourned to January 20th, 1941.

and thereafter adjourned until today, I will stipulate as recited.

By Mr. Fischl: Now in this connection this injunction suit should go in. We offer the complaint in the injunction case filed by Heiser December 30th, 1940, the temporary injunction issued January 4, 1941, the judgment of the Court on August 18th after a trial at Ada. There was a hearing in this injunction suit before Judge Rice and a hearing at Ada in March of 1941.

By Mr. Turnbull: Wherein the Court said he would not find on its merits.

By Mr. Fischl: There was a trial.

By Mr. Turnbull: We object to it on the ground it has nothing to do with this case.

By Mr. Fischl: The purpose is to show the various hearings had in this proceeding in this State in which counsel stipulates his client never appeared in any of them.

By the Court: I can't see any reason to incumber the record.

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560 LEONARD WOODRUFF, recalled, having been duly sworn as required by law, testified as follows:

Further Direct Examination.

By Mr. Fischl:

Q. Were you present in Los Angeles part of the time in taking the depositions on August 8th and 9th of 1942?

A. Yes, sir.

Q. At Mr. Casey's office and also at the Warehouse?

A. Down at the Warehouse.

Q. And Mr. Casey's office too?

A. I was only there one day.

Q. At that time in the taking of the deposition did you see Mr. Heiser?

A. No, sir.

Q. Was he present as far as you know?

A. No.

By Mr. Fischl: That is all.

Witness excused.

By Mr. Fischl: We rest except with reference to the examination of these gems and this deposition in Australia, if I can get that, otherwise we rest.

By Mr. Turnbull: We would like to cross examine Calvin Smith before you close.

By Mr. Fischl: He is not here.

By Mr. Turnbull: My name is Turnbull; I am one of the attorneys for the claimant, M. E. Heiser; on the last occasion we were here Calvin Smith, a witness, was produced
561 and examined and I announced I desire to cross examine him as shown by the transcript of proceedings and counsel said he would produce him for cross examination thereafter. Afterwards he gave me notice he would take the deposition of Calvin Smith on the 8th and 9th days of July, 1942. I sat in on that deposition and he was not produced on either days. At the time I was here and decided to cross examine Smith I had in my possession the testimony of Smith given in the case of Heiser vs. Graves, No. 238,348, being the same action in which the objectors have now filed a transcript of the pleadings in that action. By that transcript I was prepared then as now to show the exact testimony of Smith. That none of these gems shipped to the bank at Los Angeles had never been transferred to the Golden State of California and I had no opportunity to cross examine Mr. Smith as to that. If the Court please, this notice does not show he served me with notice to take the deposition of Smith and I was wrong about that, I discussed that matter with my co-counsel and I thought he did, that is wrong and in view of their not producing him
562 for cross examination I thought they served me with that notice. In view of their not producing him for cross examination I desire to offer the testimony of Mr. Smith in the case of Heiser vs. Graves which I have in my hand. He promised to return and he never did. I was assured by counsel he would be back in order that I might

cross examine him. I have this record here and now offer it in evidence.

By Mr. Fischl: In opposition to the statement of counsel I desire to say that I am one of counsel for objectors. When adjournment was had in this Court on the 27th day of November, 1940, by agreement until January 20th, 1941, objectors agreed to produce Smith as a witness for the purpose of cross examination on the hearing on January 20th, 1941. Thereafter and at a time when the witness was in Los Angeles, California, and present at the place where the depositions were taken the plaintiff took the deposition of Smith on Monday, December 23rd, 1940, in the case of Heiser vs. Woodruff in the United States District Court for the Southern District of California and the deposition was taken in the office of Meyberg & Meyberg, attorneys for the claimant Heiser, and he invited me to be present at
563 the taking of the deposition and I proceeded to the place where the depositions were to be taken and I was ordered out of the office and I afterwards secured a copy of the deposition taken by the Reporter and I have a copy of the deposition in my possession now.

By Mr. Turnbull: That is in another case.

By Mr. Fischl: Thereafter the objectors served notice upon the claimant Heiser and his attorney that they would take the deposition of Smith on the 6th day of January, 1941, in the city of Los Angeles, California, and on the 30th day of December, 1940, and after the service of that notice the claimant Heiser filed in the Eastern District of Oklahoma a civil action to enjoin the taking of the deposition and the further proceedings on his claim in this Court, and on January 2nd, 1941, the Court issued a temporary injunction enjoining the taking of the deposition and ordered the deposition of the witness at that time, and we think under those circumstances that relieves us from any liability in not producing the witness Smith.

By Mr. Turnbull: Mr. Fischl, do you say the deposition of Smith was taken in 7256-C in Southern California?

A. Yes, sir.

564 Q. In that action 7256-C you were not an attorney of record in California?

A. No, sir.

Q. You were not admitted to the Bar of the Circuit Court of the Southern District of California at the time?

A. No, sir.

Q. That deposition was taken in a case other than this case in this Court?

A. Upon which the claim of Heiser is based in this case.

Q. A case in which at the time of the taking of this deposition I was not present?

A. No, I don't think you were, you were back here to get the injunction.

Q. As far as you know I was not an attorney of record in that case?

A. I don't know, I am not familiar but your associates were Meyberg & Meyberg.

By Mr. Turnbull: That is all.

Witness excused.

By Mr. Turnbull: This is the testimony offered for the purpose of impeachment, I have it here and I am entitled to my day in Court. That testimony has been written up and there is a transcript of it here.

By Mr. Fischl: I might say this, I saw him on the night of the 6th or 7th of July, 1942 at his place of business near Temple Street I believe it was and inquired if he
565 could come back or would he come back and he told me at that time he had nine men in his employment and he could not possibly get away.

By Mr. Turnbull: That is true, I don't doubt that. But I am entitled to have his testimony in here and I desire to offer this testimony now for the purpose of impeachment. This was taken in 1933 before a Notary Public in the case of Morris Heiser vs. Maude Jane Graves, et al., case No. 238,348 and being the same case in which there has already been admitted some pleadings and testimony and I offer

now the testimony of Calvin Smith in lieu of my right to cross examine that witness.

By Mr. Fischl: We object to it as incompetent, irrelevant and immaterial and no proof here at all of the genuineness of this instrument given in a case in California. You would have to take the deposition of the Reporter who took it.

By the Court: They are entitled to cross examine him or have him here at the end of this hearing. You can have this identified by the Reporter.

By Mr. Fischl: In its present form?

By the Court: Maybe not in its present form.

By Mr. Turnbull: Then I move to strike the testimony of Calvin Smith given in behalf of the objector on
566 the ground that we have had no opportunity to examine that witness or impeach him or explain his testimony and that witness was to return here before this Court for the purpose of cross examination.

By the Court: He did not give a great deal of testimony, let it stand as it is.

By Mr. Turnbull: Exception. I will take the deposition of this Reporter as soon as I can give notice and offer at this time that deposition as part of the cross examination of Calvin Smith and with that we rest.

By Mr. Fischl: We are through but we would like for the Court to see this material.

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567 Immediately after the hearing herein on the 27th day of July, 1942, the Hon. Geo. Clark, Referee in Bankruptcy, together with P. M. Jackson the Trustee herein; Hon. Louis A. Fischl, Attorney at Law, T. G. Gibson, Attorney at Law, and the Court Reporter, O. E. English, went to the storage house of Tom Echols in the City of Ardmore, Oklahoma, and viewed some 35 sacks of materials, one or two sacks were opened and the contents therein were examined in part and all of said materials returned to its original container, tied up and left where found. The materials

therein appeared to be some kind of dark substance with the appearance of slate and dark colored stone or rock.

State of Oklahoma, Carter County.

Reporter's Certificate.

568 I do hereby certify that the above and foregoing transcript of the testimony in the above entitled cause is a true and correct transcript of the shorthand notes taken by me as Reporter in the trial of said cause, at Ardmore, Oklahoma, on the 27th day of August, 1942, said case being tried before Hon. George Clark, Referee in Bankruptcy, and that the testimony of the witnesses herein shown was correctly taken down by me in shorthand during the progress of said trial, and that the same is in all respects a true and correct transcript and report of the testimony of all witnesses produced upon said trial.

Witness my hand as such Reporter, this 15 day of April, 1943.

O. E. English, Court Reporter.

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Vol. II

TRANSCRIPT OF RECORD

(Pages 649 to 1306)

Supreme Court of the United States

OCTOBER TERM, 1945

No. 496

M. E. HEISER, PETITIONER,

vs.

WILLIE MAE WOODRUFF, HOWARD L. WOODRUFF, MARGUERITTE B. WOODRUFF, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 16, 1945.

CERTIORARI GRANTED DECEMBER 17, 1945.

United States Circuit Court of Appeals

TENTH CIRCUIT.

No. 3052.

WILLIE MAE WOODRUFF; HOWARD L. WOODRUFF; MARGUERITE WOODRUFF; LEONARD WOODRUFF, JR.; IDA BELLE WOODRUFF; and LEONARD J. WOODRUFF, APPELLANTS,

vs.

M. E. HEISER, APPELLEE.

No. 3053.

WILLIE MAE WOODRUFF, APPELLANT,

vs.

M. E. HEISER, APPELLEE.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

FILED SEPTEMBER 5, 1944.

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[OBJECTORS' EXHIBITS AA to YY.]

[Objectors' Exhibit AA.]

In the District Court of the United States for the Southern District of California, Southern Division. In Bankruptcy No. 13393-J.

In the Matter of Golden State Gem Company, a corporation, Bankrupt.

Judgment Docket.

The undersigned, Referee herein, herewith transmits to the Clerk of said Court a list of Claims proved against said estate, together with the names and addresses of the proving creditors, as follows, to-wit:

Claimant	Filed	Allowed	Amount	Attorney
M. E. Heiser by E. A. Lobree, his attorney-in-fact	Feb-20-30	Disallowed	30,250.00	F. A. McFarland /&/R. L. Beveridge

EARL E. MOSS,
Referee in Bankruptcy.

Heiser v. Woodruff, No. 7256-C. Plaintiffs Exhibit No. 7, filed 6/27, 1939. By Cross, Deputy Clerk.

M. E. Heiser, Plaintiff, vs. Leonard Woodruff, et al., Defendants. No. 7256-C Law.

At a stated term, to wit: The February Term, A. D. 1939 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 20th day of March in the year of our Lord one thousand nine hundred and thirty-nine.

Present: The Honorable Geo. Cosgrave, District Judge.

This cause coming before the Court for hearing on motion of defendant Walter Calvin Smith to dismiss because of

want of prosecution through inexcusable delay in service of summons, pursuant to notice filed March 10th, 1939; Leonard J. Meyberg, Esq., appearing as counsel for the plaintiff and Robert L. Beveridge, Esq., appearing as counsel for the defendant Walter Calvin Smith, and Attorney Robert L. Beveridge, having informed the Court that he does not wish to submit to the jurisdiction of the Court at this time, and Leonard J. Meyberg, Esq., having made a statement to the Court, it is by the Court ordered that the above motion stand submitted on points and authorities to be filed by both sides simultaneously by March 22nd, 1939; and, the default of defendant Leonard Woodruff having heretofore been entered, and this cause now coming before the Court for hearing on entry of judgment against Leonard Woodruff only, Morris Emanuel Heiser, plaintiff, at 10:25 o'clock A.M., is called and sworn and testifies on direct examination conducted by Leonard J. Meyberg, Esq., and having been examined by the Court, Leonard J. Meyberg, Esq., asks for judgment favor of plaintiff for $164,000.00 with interest at 7% from May 13th, 1929, against Leonard Woodruff and waives exemplary damages; and thereupon it is by the Court so ordered and Leonard J. Meyberg, Esq., is instructed to prepare judgment for signature of the Court.

[Objectors' Exhibit BB.]

569 C. N. Olson, a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live at Los Angeles and have been a Court Reporter for twenty-three years. I have reported for the Railroad Commission of California, the Superior Courts of Los Angeles County, the Municipal Courts of Los Angeles City; Earl Moss, referee in bankruptcy, and have been official Court Reporter for Ernest E. Utley, referee in bankruptcy since 1938. Objectors' exhibit one to the deposition of C. N. Olson is a transcript which I prepared of the proceedings in re objection to the claim of M. E. Heiser in the matter of Golden State Gem Company, bankrupt, given on April 14, 1932 and Friday, April 22, 1932, in the courtroom of Earl E.

Moss, who at that time was referee in bankruptcy. I took those proceedings down in shorthand, subsequently transcribed them and objectors' exhibit one is a full, true and correct copy of the proceedings had and the evidence taken on those hearings and at the times mentioned. The transcripts of the evidence of the witness M. E. Heiser appearing on pages 11, 20, 44 and 148 or beginning on those pages, was given by that witness at the times stated and is true and correct. Objectors' exhibit one to the deposition of C. N. Olson, is offered in evidence.

No cross examination.

H. A. DEWING, a witness on behalf of objectors, testified as follows:

Direct Examination.

I live at Los Angeles and am a Court Reporter connected with Reynolds and McClain. I have been a Court Reporter for 35 years, reporting for Ventura and Santa Barbara Counties, the United States Board of Tax Appeals, and for six years have been a reporter in the Federal Court. Reynolds and McClain are the official reporters for the Federal Courts in this District. Objectors' exhibit one to the deposition of H. A. Dewing is a transcript of the arguments on motion to vacate judgment and set aside default in the case of Heiser vs. Woodruff in the District Court of the Southern District of California, Central Division. These proceedings were reported on September 26, 1939 before
Judge Cosgrove. I reported the proceedings had at
570 that time and this is a true and correct transcript of
the proceedings. The transcript does not contain any evidence. I will check my notes to be sure whether any evidence was introduced and will report back later.

Objectors' exhibit two to the deposition of H. A. Dewing is a transcript of the testimony and proceedings on the presentation of evidence as to the value of the property of plaintiff in the case of Heiser v. Woodruff in the United States Court for the Southern District of California, Central Division, before Judge Cosgrove, No. 7256-C-Law. I took and transcribed the proceedings shown on pages 52 to

333, inclusive, of the transcript and they are fully and correctly shown. Mr. McClain reported the proceedings contained on pages 2 to 51, inclusive.

Cross Examination.

The proceedings shown by this transcript were had pursuant to the order of June 8, 1939.

C. W. McClain, as a witness for objectors, testified by deposition as follows:

Direct Examination.

I am a member of the firm of Reynolds and McClain which firm has been official reporters to the United States District Courts for this District for ten years. I have been a Court Reporter since 1907. I was an official Court Reporter for the United States District Court for this District in June, 1939 and reported the proceedings on the first day of the hearings had June 19, 22, 23, 27, 28, 1939 in the case of M. E. Heiser, Plaintiff, v. Leonard Woodruff, et al, Defendants, No. 7256-C-Law before Judge Cosgrove, which proceedings are shown in transcript before me, identified as objectors' exhibit number two to the deposition of H. A. Dewing. The part of the proceedings I took were transcribed by me and are shown at pages 1 to 51, inclusive, and are true and correct as shown by the transcript. Objectors' exhibit two is offered in evidence.

Cross Examination.

The proceedings lasted five days. I reported the first day and assigned Mr. Dewing to report the balance.

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571 J. A. Seelye, as a witness for objectors, testified by deposition as follows:

Direct Examination.

I live at Van Nuys, California, about twenty miles due west of Los Angeles. I have lived in Southern California thirty-seven years and am now cashier for the Acme Brewing Company, Los Angeles. In 1928 I was connected with the

United States National Bank, Eighth and Spring Streets, Los Angeles as Assistant Cashier and Auditor. I had charge of safe deposits. I issued receipt for them and saw that they were properly deposited in the vault. I knew M. E. Heiser. I got acquainted with him in connection with the bank and at first in connection with an account that he opened at the bank. These instruments you hand me are photostatic copies of the individual ledger sheets of the Australian-American Gem Mining Company in the United States National Bank. I would say that this was my first meeting with Heiser, at the time this account was opened. He was either the sole signer or one of the signers of this account of the Australian-American Gem Mining Company. "Signers" are persons authorized to draw checks on accounts. This account was opened July 9, 1928.

As I recall, the next transaction with Mr. Heiser was a deposit of some material he wanted placed in safe deposit. I do not recall when that was and have no way of telling. I have not been connected with the bank since it closed late in 1929 or early in 1930. I believe—I would say my connection with the bank closed in September, 1930, that is as close as I can give. I would say that the deposit of the sacks of material by Mr. Heiser was made between the time of this deposit in July, 1928, and the time the bank closed in the latter part of 1929 or early part of 1930.

I actually received the deposit in the bank and recall it very well. It was brought in by truck. I think there were some twenty-odd sacks, that is my recollection. They were placed immediately in the safe deposit vault in the name of Morrie Heiser. It was his own personal property, as represented to us. I recall in general terms the receipt which was issued by me for this material. It stated that the United States National Bank acknowledged receipt from Mr. Heiser of so many sacks, said to contain valuable gems.

There was a discussion between Mr. Heiser and I about putting a value on this material. He wanted a value placed on the material which was to be stated in the receipt. I replied that I had no idea as to the value of them and unless he

wanted to get an appraiser to come there to appraise them and state to us officially or give us a certificate as to value, that there would be no value placed on the receipt. I was shown some of the material by Heiser. The material he showed me had a very close resemblance to country rock, as far as I was concerned. I mean by "country rock" just ordinary rock like we find around any mining claim. There were various sizes, some small pieces and some *quiet* large pieces. I would say they ran from an inch and a half to two inches in size up to five or six inches, as I recall in various colors.

Nobody had access to that material except Mr. Heiser and none of it was taken out until it was all taken out. I have seen these papers before which are now identified as Exhibits 1A and 1B to the deposition of J. A. Seelye. That material was taken out of the bank under this case number but before it was taken out we had an order from the Court or the sheriff or somebody, before we would release it. By referring to this exhibit, I would say it was released sometime subsequent to April 19, 1929. It was all taken out of the bank at one time, after the storage was paid on it, that was the end of it so far as we were concerned.

Mr. Heiser never made any claim on the bank for this material. There was only one deposit made in the bank of this material. It was all deposited at one time. And whatever was deposited was taken out at one time.

I do not know Walter Calvin Smith. He did not have access to this material *which* it was in the bank.

573 I do not know Leonard Woodruff. He did not have access to this material while it was in the bank. He did not take any of it out of the bank.

No particular value was placed upon any particular sack by Mr. Heiser and no particular sack was pointed out to me by Mr. Heiser or designated as containing material of more value than the other sacks. In response to my suggestion that he have an appraiser appraise the property if he wanted a value placed on it he said, "It wasn't necessary", that he would take the responsibility for the material without any value on it and he did that.

The sheets showing the account of the Australian-American Gem Mining Company in the United States National Bank of Los Angeles are identified as objectors' exhibits 2-A, 2-B and 2-C to the deposition of J. A. Seelye.

No person representing or purporting to represent either Walter Calvin Smith or Leonard Woodruff, or both, ever gained access to this material while it was in the bank or took any of it away before the attachment. It would be absolutely impossible for anyone to get any of that material out except on an order from Mr. Heiser or outside of an attachment or a legal proceeding of some kind.

Cross Examination.

I am in error as to the time of the closing of the bank, it was September, 1931. I issued a receipt to Mr. Heiser for this material. When it was taken out it was taken out under this attachment in the suit of Woodruff v. Golden State Gem Company.

The *objectors'* offer in evidence their exhibits 1-B, 2-A, 2-B and 2-C to the deposition of J. H. Seelye.

FRANCIS B. COBB, as a witness on behalf of the *objectors*, testified to the deposition as follows:

Direct Examination.

I live at 5119 Earl Drive, Altacanada, California. I am engaged in the practice of law with my office at 639 South Spring Street, Los Angeles Stock Exchange Building, Los Angeles, California. I am a man of family, a native Texan and have lived in Southern California since 1923; I have been engaged in the practice of law since 1926, graduating from Loyola College, Los Angeles. I represent, or
574 have represented, P. M. Jackson, Trustee for the estate of Leonard J. Woodruff, in the matter of the bankruptcy of Leonard J. Woodruff in the United States District Court in the Eastern District of Oklahoma in case #7623; my recollection is I was first employed in September or October, 1939 in connection with the judgment in favor of Mr. Heiser and against Mr. Woodruff. I was requested by the Trustee to make an examination of the

files and records and furnish my suggestions as to whether the judgment could be vacated and the general grounds under which the proposed attack on the judgment would be made. I received my instructions from P. M. Jackson, Trustee, and in pursuance of those instructions I prepared a proposed answer and a copy of notice of motion and presented the authorities in support of the motion and I believe an affidavit in connection with the motion. I subsequently filed a motion to vacate the judgment in that case which was heard by Judge Cosgrave which was denied.

No evidence was offered and received. The Court merely listened to argument by opposing counsel or by the two counsel, Mr. Meyberg, representing Mr. Heiser, and myself, representing the Trustee. The argument that was advanced on behalf of the Trustee followed the brief that had been made on the points and authorities that were attached to the motion. Prior to the completion of the argument, the judge interrupted my argument and asked to hear from Mr. Meyberg, and after Mr. Meyberg had talked a short time he denied the motion. The only proceedings had on the presentment of the motion to vacate the judgment on behalf of the Trustee were the arguments before the Court by counsel upon the questions involved and no evidence was heard; no evidence was offered or received; it was purely an argument on the questions of law that had been raised by the motion and the argument of counsel. Other than the appeal there were no other proceedings in respect to the judgment itself after that.

"I know Leonard J. Woodruff, his wife Mrs. Willie May Woodruff and Howard L. Woodruff. I met them either in the later part of 1931 or the winter and spring of 1932. I represented Mr. and Mrs. Woodruff both during the year 1932 and 1933 and am familiar with the so-called thirty-six sacks of sapphires, rough gems, involved in this litigation and first learned about the matter in a proceeding in the matter of the Golden State Gem Company in a hearing before Earl E. Moss, in which I represented Leonard J. Woodruff in a bankruptcy proceedings which was in the
575 matter of the bankruptcy of Golden State Gem Company, bankrupt No. 13393-J held before Earl E. Moss, referee, pending in the United States District Court in and for the Southern Division of California.

On May 9th, on or about that date, I had occasion to see Mr. M. E. Heiser near the Hall of Justice, in the City of Los Angeles. Mrs. Woodruff and I, and I believe Paul Hornaday, came from the District Attorney's office with a deputy, I think his name was Russell, and went to a truck which was located between Temple and First Street, on Broadway and on this truck was what is known as semi-precious stones or sapphires and zircons. I was there in connection with a complaint that the District Attorney's office had under consideration against Leonard J. Woodruff, Mr. M. E. Heiser being the complaining witness, who had called on them with the British *Counsul* in Los Angeles and asked for a complaint in connection with some 35 or 36 sacks of rough sapphires. I had been employed by Mr. Woodruff to ascertain the nature of the matter and see what could be done in his behalf. And I advised the District Attorney's office that it was purely a civil matter and the District Attorney's office stated that they were advised that the *sapphire* had been disposed of, and I corrected that impression and told them they could be produced, and finally it was agreed that if the sapphires were produced and placed where they could be subject to levy, or whatever action Mr. Heiser might desire to take, that they would consider it a civil matter and drop any criminal proceedings and I arranged for the sapphires to be brought in a truck to the Hall of Justice and Mr. Russell, a Deputy District Attorney, went down and also Mr. Heiser was there and also Leonard Meyberg and Mrs. Woodruff and Howard Woodruff and Paul Hornaday; we all went down to the truck around 12:00. Mr. Heiser made an examination of the stones and identified them as the sapphires that were in question. It was agreed to store them in the Colyear Warehouse for a reasonable period of time; this was done and a warehouse receipt was taken for them. This receipt was issued in my name and I presented a copy of it to the Deputy District Attorney. I held them until some time in the year 1933 at which time I delivered the warehouse receipt to Mr. Earl Opsahl, attorney for Mr. Woodruff, on the request of Mr. Woodruff, and I transferred the receipt to Howard Woodruff.

576 Mr. Heiser examined the stones. He climbed on the truck and each sack was examined. Mr. Heiser claimed that one sack was missing but I had no independent knowledge of this. The truck on which the sacks were loaded was parked on the side of the street between Temple and First Street on Broadway near the Hall of Justice in the City of Los Angeles, approximately two or three hundred feet from the corner and near the office of the District Attorney.

At the time Mr. Heiser made a statement to the effect that he could not find what he termed "one of the better stones"; however, he merely looked at the top of the sacks. He opened the top of each sack. A few of the sacks were torn on the side and he made an examination of the contents of those sacks by examining the material through these holes; the sacks were not emptied nor were the cans in the sacks emptied. The contents of the sacks were not weighed.

I did not go with the truck to the warehouse after this examination.

Cross Examination.

I have no understanding as to how Mr. Woodruff came into possession of the stones but Mr. Woodruff advised me in May or about May that he could produce the stones. I was acting for Leonard J. Woodruff when Howard Woodruff brought the stones to us by truck for examination.

I do not have any recollection of Mr. Clare Woolwine being present at the time these stones were examined.

Prior to the making of the motion to vacate and set aside the judgment in the case of M. E. Heiser v. Leonard Woodruff, 7256-C-Law, in the District Court of the United States for the Southern District of California, before Judge Cosgrave, Leonard Woodruff made a similar motion, but I hadn't represented Mr. Woodruff since 1933, however, I did perfect an appeal but I do not know if that was an order from Judge Clark and I appeared before the United States Circuit Court of Appeals for the purpose of arguing that appeal. I do not believe I argue anything that was not set forth in the brief.

(At which point Mr. Fischl, of counsel for plaintiff, interposed that he had a certified copy of Mr. Cobb's brief used in the United States Circuit Court of Appeals for the Ninth Circuit, in the matter of the appeal from the order of Judge Cosgrave denying the motion to vacate the judgment in Heiser v. Woodruff, and would offer it in evidence.)

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577 JOHN GREBLE MORAN, called as a witness on behalf of *objectors*', being first duly sworn, testified as follows by deposition:

Direct Examination.

My name is John Greble Moran, also known as Jack Moran, and I live at 154 North New Hampshire Avenue, Los Angeles, California and I have lived in Los Angeles for twenty or twenty-five years. I am engaged in the business of Art and antiques and period furniture and I was at one time a dealer in jewelry and precious stones. I know Leonard J. Woodruff and have known him for about fifteen years and am acquainted with and have been in Mr. Woodruff's home in Los Angeles many times. I am also acquainted with Mr. M. E. Heiser, I believe I met him about April or May or 1928 in Hollywood, California at my place of business at 1757 North Highland Avenue, now 1759. At that time I had been asked to appraise some antique jewelry, for Mrs. McPherson at the Angelus Temple which I did and which appraisal was one I deemed a fair appraisal but much higher than I would have given to a dealer; a few days later Mr. Heiser came in and introduced himself to me and asked if I was Mr. Moran and if I had appraised some jewelry for Mrs. McPherson. To which question I answered, "Yes." He became somewhat incensed and a little belligerent when I refused to raise the value of my appraisal of this jewelry and would not consider what he termed a "good fair cut on it". After a few days he returned to see me and asked me if I knew Mr. Leonard Woodruff and when I told him I did he, Mr. Heiser, showed me some samples of Australian sapphires and sought to induce me to prevail upon Mr. Woodruff to finance a big concern in Los Angeles to wholesale and retail all kinds of gems, cut them, etc. and suggested that Mr. Woodruff should "put

up" between $25,000.00 and $50,000.00 and Mr. Heiser promised to give me 40% of the money that I could get Mr. Woodruff to advance. This conversation took place in May or April of 1928 to the best of my recollection. Mr. Woodruff and I had been friendly in more than a business way and when Mr. Heiser again called on me in regard to this I told him I didn't think I could help him in this matter.

578. Mr. Heiser endeavored to have me contact other men to enter into such a business and at that time showed me some uncut Australian sapphires, they were uncut—like chunks of coal almost. I examined them and to my notion they were not very translucent; however it is hard to decide from an uncut stone what it is going to be. The color was greenish, so that they would not be saleable as gems. Mr. Heiser informed me that he had a large amount of these uncut stones and that he could start right into dealing in them.

I saw Mr. Woodruff a few days later, maybe about the same night, about that time, and I told him that Mr. Heiser had been in and had some uncut stones and explained what I have just told you. I also told Mr. Woodruff that Heiser offered me such an enormous cut in it that I didn't think it sounded like a legitimate proposition. I never received any of this money and I don't believe I ever saw Mr. Heiser again.

Cross Examination.

This conversation that I just talked about took place about thirteen or fourteen years ago and I reported my conversation with Mr. Heiser to Mr. Woodruff. Any dealings that Mr. Woodruff had with Mr. Heiser with respect to sapphires and zircons and opals, the subject of this lawsuit I am testifying in, I think happened after I told Mr. Woodruff what kind of a deal Heiser had tried to put over on him.

I have never been called in the case of Heiser vs. Woodruff in any of the litigations heretofore.

Redirect Examination.

I was contacted about a year or so ago to be a witness in this case by Mr. Woodruff.

H. A. DEWING, a witness heretofore duly sworn on behalf of objectors, upon being recalled, testified as follows:

Direct Examination.

My name is H. A. Dewing and I testified earlier this morning. I have examined my records to ascertain whether or not objectors' Exhibit 1 to the deposition of H. A. Dewing contains all of the proceedings and all of the evidence
579 offered and introduced upon that hearing on the day shown in the transcript and that is a full transcript of the proceedings, with the exception of the Judge's opinion and remarks which I note here were included in a separate transcript. This transcript was ordered by Mr. Cobb. The transcript that I made of the Judge's remarks is a true and correct transcript of the remarks of the Court at that time and a copy was delivered to Mr. Cobb and one to Mr. Meyberg. There were no proceedings except the Judge's opinion and the remarks which are included in the transcript. There were no other proceedings on that day. I have checked both my notes and the calendar sheet.

Cross Examination.

Therefore the transcript I identified this morning, which is objectors' Exhibit No. 1 is not complete in that the transcript of the remarks of the Court is not included; that is in some separate transcript. We have a copy of it somewhere and I have it in my notes. I do know the notes were transcribed and a copy is in existence somewhere.

Redirect Examination.

I have my notes with me now. I could read them into the record. However, Mr. Cobb has a copy and I would be willing to obtain a copy of his copy and after identifying it I would be willing to make a certificate and attach it to the new copy.

GEAN KOSTO, called as a witness on behalf of *Objectors*, being first duly sworn, testified as follows:

Direct Examination.

My name is Gean Kosto and I live in Pasadena. My business is restoring old masters and collecting. I have

been in this business since 1915 and have lived in southern California since 1926. I have known Leonard Woodruff since the end of 1926 and have visited in his home on several occasions. I know Mr. Heiser. I met him in 1928, but I am not sure of the exact time of year, but I met him at the Woodruff home. At that time, Paul Hornaday was there and also some jewelry man named Smith and Mrs. Woodruff was there. At that time I heard a conversation between Mr. Heiser and Mr. Leonard Woodruff and
580 Mr. Herman Woodruff. I was in the same room with them. The conversation had been between Woodruff and Mr. Heiser about some mine; Mr. Heiser was speaking about a big mining business to Mr. Woodruff and proposing to him that he has got big prospecting and wonderful mines in Australia. I told Mr. Woodruff he was buying enough things here that he could see. I asked Mr. Heiser to show Mr. Woodruff something that was worth something and Mr. Heiser offered to show his mines. Herman Woodruff agreed with me that Mr. Leonard Woodruff should see the mines before buying but at that time Mr. Leonard Woodruff was awful sick. It was finally agreed after much discussion, that Heiser and Herman Woodruff were to meet within two or three weeks and go to Australia but I do not know whether they met or not. However, Mr. Heiser agreed to go to Australia with Herman Woodruff in order that Herman Woodruff could see the things is right, the proposition Mr. Heiser gave Woodruff.

Cross Examination.

My nationality is Rumanian and I am a Canadian subject.

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581 HOWARD L. WOODRUFF, as a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live at 1525 South Hauser, Los Angeles, and I am the son of Leonard Woodruff. I have been working in the shipyards. I was 12 years old in 1928 and was living with my mother and father at 2436 Inverness Avenue, Los Angeles, where I first saw Mr. Heiser some time in the summer of 1928. I saw him numerous times; 30 or maybe 40 times.

In May, 1932, I was here in Los Angeles and I remember an occasion when certain material was taken on a truck to a building in Los Angeles. I was there. We met downtown. I don't know exactly—Ninth and Spring, or somewhere about Eighth or Ninth and Spring, I believe. The so-called sapphires were on the truck in 35 or 36 containers, something like that. My mother, Ern Brown, Raymond Macdonald, Paul Hornaday, Francis B. Cobb, M. E. Heiser and Leonard Meyberg were present. The stones were on the truck and my mother and I met them down there and Mr. Heiser came out there and I believe Mr. Meyberg, Mr. Cobb and Mr. Hornaday. Mr. Heiser had been claiming that these stones had been misappropriated, so he got up on the truck and opened each sack and looked at them. And my mother asked him, "Are these your stones?" And he reached down in them maybe six inches or a foot and lifted out handfuls of them, and he looked at each sack, container. My mother asked him, "Are these your stones?" And he said, "Yes, they are. I am not positive as to whether all of them are here or not. I will have to weigh them first." So it was agreed to take them down to Colyear's Warehouse and there were weighed. I don't remember exactly how much they weighed—4200 or 4300 pounds, I believe. Mr. Heiser was present when they were weighed at the warehouse, sack by sack. Then they were placed in a vault at the warehouse. It couldn't be agreed upon as to whose name they were to be put in so finally they decided to put them in Mr. Cobb's name. Mr. Heiser agreed to that. He said, "Put them in his name." After they were weighed, Mr. Heiser said they were all there. In fact, he thought there was a little extra weight in them. When he examined them on the truck downtown he would reach down inside and take out handfuls. He emptied some of the cans out and poured them out and put them back in. He said he was satisfied they were his stones.

582 The stones were afterwards transferred to my name in the warehouse. I have not taken any of those stones out myself. In 1939, Mr. Heiser and several supposed to be expert witnesses wanted to look at them and I signed an access slip so that they could be appraised. Mr. Heiser collected samples from the sacks and put them in

envelopes. Those were the only ones that were ever taken out of the warehouse, except we had the warehouse take stones up to the Post Office Building to use during the hearing before Judge Cosgrave. They were afterwards returned to the warehouse. As far as I know, all of the stones that were put there in 1932 are still in the warehouse with the exception of the few Mr. Heiser took out and I don't know whether they were returned or not.

Cross Examination.

I am 26 now and I was 16 at the time the truck was examined down on Eighth or Ninth and Spring Streets. Raymond Macdonald was driving the truck. He picked up the material at my mother's house on Inverness Avenue in Los Angeles. I don't know how long it had been there. Mr. Francis Cobb was present. Mr. Heiser said there was one sack missing. That is the reason he had to weigh them. I did not hear Mr. Heiser say that some of the best stones were missing. It was not said at the warehouse that sand was put in the sacks.

CHARLES B. MARLATT, as a witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

My home is 2726 West Ninth Street, Los Angeles, and I am Manager for Colyear Van & Storage Company which is engaged in moving, packing, shipping and storage of household goods, office fixtures and general storage at 415 South San Pedro, Los Angeles. It stores household goods and various materials and other commodities. We have in storage here some materials our warehouse receipt calls bags of rock. I am not a mineralogist.

When a shipment comes in here, it is given a lot number. This particular lot number is 21635. Each article is marked with that lot number. 21365, and the bag numbers would be like 1, 2, 3, 4, 5, and each article is marked with that lot number and tagged separately, 1, 2, 3, 4, 5, etc. We make up a storage contract. We have a loose leaf ledger sheet in there, and we also have a main book that it is entered in from which we procure the consecutive lot numbers,

and that book shows the lot number, and then when
583 it is finally put in location, it shows the location and the floor, and each floor is numbered, and the rooms are numbered individually. The listing receipt calls for 35 pieces in this lot. This is the type of record we keep as part of our business and as a part of the permanent records used in connection with this storage contract. This checking list you have here is used as a part of the permanent records in connection with the permanent warehouse storage contract. I have here the checking list and the contract.

The checking list is identified as objector's Exhibit 1 to the deposition of C. B. Marlatt and is offered as evidence.

The storage contract is identified as objector's Exhibit 2 to the deposition of C. B. Marlatt and is offered as evidence.

This storage contract was originally taken in the name of Francis B. Cobb and was assigned on June 28th, 1933, to Howard C. Woodruff. No new contract was issued. We have a written order from Mr. Cobb to do that.

No *Corss* Examination.

NORMAN R. DUNN, as witness on behalf of the objectors, testified by deposition as follows:

Direct Examination.

I live at 1311 North Coronado Street, Los Angeles, and have been an Assistant National Bank Examiner since April 16th of this year. From December 10th, 1941 to April 16th, I was Assistant Examiner in the Foreign Funds Control and prior to that time, for 19 years, I was connected with the United States National Bank and its receiver, Eighth and Spring Streets, Los Angeles, which went into the hands of a receiver on August 18th, 1931. Prior to the receivership, I was Assistant Auditor under Mr. J. A. Seelye, the auditor, and subsequent to that time I handled the books of the receivership and was assistant receiver.

I remember the account of the Golden State Gem Company, of Nevada and the account of the Australian American Gem Mining Company. The receivership of the bank was

terminated on January 31st, 1942. All the records of the bank that went into the hands of the receiver have been destroyed with the exception of the receivership books. All old bank records have been destroyed. Prior to the destruction of the records I was called upon to make a
584 search for the purpose of ascertaining what our safety deposit records disclosed with reference to certain materials which were stored in the bank in August of 1928 either by the Golden State Gem Company or M. E. Heiser. I was unable to locate those records. The request was made after the bank closed and I was unable to locate the records. I made a thorough search for them. I made two searches. I was unable to find any safe-keeping receipts or records.

I am familiar with objector's Exhibits 1a, 1b, 2a, 2b and 2c to the deposition of J. A. Seelye. These Exhibits are photostats that I had made. At the time they were made, they were part of the records in the hands of the receiver. The records which I had photostated were all of the records that I could find pertaining to the Golden State Gem Company of Nevada and the Australian American Gem Mining Company. Objector's Exhibit 1 to the deposition of N. R. Dunn is a photostat copy of a part of the records of the bank which we had there in the bank as is also objector's Exhibit 2. These instruments were part of the records found in the bank.

Objector's Exhibits 1 and 2 to the deposition of Mr. Dunn are offered in evidence.

No Cross Examination.

LOUIS ORECK, as a witness for the objectors, testified by deposition as follows:

Direct Examination.

I live at 527 North Norton Avenue, Los Angeles. I have been engaged in the jewelry business for 42 years. My place of business now is at 130 North Brand, Glendale, California. Irving Oreck is my son. I do not know where he is now. I have had about 30 years dealing with semi-precious stones. I would call myself an expert. I have had a lot of ex-

perience. I can tell zircons, sapphires and opals when I see them. I would buy rough stones and send them to be cut.

I remember the Sheriff's sale at public auction of some materials here in Los Angeles in 1929. I attended the sale. It was upstairs in a big building. I don't know just where it was located. I don't know who was in charge of it. Quite a number of people were there. Leonard Woodruff was there. It was a public sale. I was there to find some zircons for my son, to pick out some for him, to see if they were worth buying. There were a lot of sacks and there
585 were some large cans that had covers on them. I examined most of the stuff. I picked out one sack for my son which I thought to be pretty good. The others looked like a bunch of gravel. I picked out what I considered to be the best sack. My son bought it at public auction for $150.00. It weighed close to 100 pounds and was supposed to contain sapphires. I saw quite a lot of people there and heard a lot of excitement. I could have bid on the rest of the stuff if I had wanted to. In examining it I did not find any zircons or opals. I saw one piece of jade there—about 10 pounds. I looked at it. It had so much inferior stuff in it I didn't want it. I wouldn't give anything for it. I didn't want it.

My son went to work on the sack of stuff he bought for $150.00. He picked out the best stuff and put it in a cigar box, then he had one cut somewhere and found that it was worthless. He took it to his home from the place where he bought it. I examined the sack of material that he picked out and put in a cigar box. He finally *through* it out and gave me the cigar box. It was worthless.

No Cross Examination.

CLAIRE E. CONE, as witness on behalf of objectors, testified by deposition as follows:

Direct Examination.

I live in Los Angeles and I am a reporter for the Division of Corporations of the State of California and was so employed in 1937. Objector's Exhibit 1 to the deposition of Claire E. Cone is a transcript of my stenographic notes

taken at a hearing in the matter of International Gems which started on July 20th, 1937. There were several hearings which I correctly noted on the front sheet of the transcript. I reported proceedings on each of the hearings indicated and at that time was an official reporter for the Division of Corporations. The report was done in the matter of the investigation and examination of *Internation* Gems which was an investigation of this corporation by this Department. The matter was docketed in the Division of Corporations at that time as file No. 65704 LA. There were 313 pages in the transcript. The first three or four pages in the transcript contain an index. The testimony of Mr. M. E. Heiser appears to have started at page 127 by direct examination, *corss* examination 196, redirect examination 205 and he was called for reexamination at a later ses-
586 sion, page 224. There is other testimony of Mr. Heiser on page 230 and page 261. I reported the testimony of Mr. Heiser as shown in the transcript and the transcript is a true and correct record of his testiinony given on the occasions noted.

Thereupon, the testimony of M. E. Heiser as shown in the transcript was offered in evidence. Harry A. Goldman appeared and participated in the proceedings as attorney for Mr. Heiser. The Exhibit shown on pages 109, 110 and 111 is a true and correct copy of the Exhibit indicated there. It was introduced in evidence at the hearing.

Exhibit appearing on pages 109, 110 and 111 is offered in evidence as a part of this deposition.

Cross Examination.

This record which I have identified and concerning which I have testified, is in the matter of International Gems, a corporation. I do not know whether Mr. Heiser appeared in those hearings in any other capacity than as a witness.

Redirect Examination.

The proceedings reported on pages 1 to 4 of the transcript occurred during the hearing and as a part thereof, also pages 5 and 6 down to the taking of the testimony of Mr. Jackson.

Pages 1 to 6 down to the taking of the testimony of Mr. Jackson *offerred* in evidence and as part of this deposition.

(Certificate of Notary shows that depositions taken before C. W. McClain, a Notary Public in and for the County of Los Angeles, State of California, at which time the witnesses, C. N. Olson, H. A. Dewing, J. A. Seelye, Francis B. Cobb, John Greble Moran, Gean Kosto, Howard L. Woodruff, Charles B. Marlatt, Norman R. Dunn, Louis Oreck and Claire E. Cone appeared and testified in pursuance of the notices attached to the depositions.

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587 D. K. STERN, called as a witness by the objectors to the claim of M. E. Heiser, testified as follows:

Direct Examination.

My full name is D. K. Stern. I am assistant auditor of the Wells Fargo Bank and Union Trust Company of San Francisco and am familiar with the records of the safe deposit vaults of the Union Trust Company, which merged with the Wells Fargo Bank either in December, 1923, or January, 1924. I have caused an examination of the records of the safe deposit vaults of the Wells Fargo Bank and Trust Company with reference to M. E. Heiser to be made. The records show that during the period from 1915 until 1928, a safe deposit box was rented in the name of E. A. Lobree, M. E. Heiser and Mrs. M. E. Heiser, jointly, in the Wells Fargo Nevada National Bank, which is now the Wells Fargo Bank & Union Trust Company. The box was rented on September 10th, 1920 and surrendered April 10th, 1923. It was a five dollar box, 2½ inches deep by 5 inches wide by 23 inches long. The five dollar box was surrendered on April 13th, 1921 for a fourteen dollar box, 3½ by 10½ by 23 inches long. We have no record of any other safe deposit box rented to Mr. Heiser. Mr. Heiser, on February 11th, 1915, deposited in our storage vault one wooden chest under our receipt 210 with a declared value of $1000.00, which was withdrawn on March 24th, 1916. On June 15th, 1915, Mr. Heiser deposited one large iron chest under receipt 228 with a declared value of $750.00, which was withdrawn on March 24th, 1916.

On October 1st, 1915, M. E. Heiser deposited one box, covered with burlap, under our receipt No. 251, with a declared value of $500.00, which was withdrawn on March 1st, 1916.

On April 7th, 1916, M. E. Heiser deposited one burlapped chest, under our receipt No. 282, with a declared value of $1,000.00 which was withdrawn on August 9th, 1916.

On May 1st, *1917,* M. E. Heiser deposited one leather suitcase, under our receipt No. 291, with a declared value of $300.00, which was withdrawn on May 18th, 1916.

On September 1st, 1916, M. E. Heiser deposited two burlapped boxes, under our receipt No. 332, with a declared value of $500.00, which was withdrawn on October 3rd, 1916.

On July 23rd, 1919, Mr. or Mrs. M. E. Heiser deposited one grip, under our receipt No. 658, with a declared value of $500.00, which was withdrawn on September 30th, 1919.

588 On September 13th, 1920, E. A. Lobree, and M. E. Heiser deposited one small trunk, under our receipt No. 904, with a declared value of $1,000.00, which was withdrawn on December 31st, 1920.

There are no further records of any deposits by Mr. Heiser from the period of January 1st, 1915, through the year 1928.

The records do not show the contents of any of the packages. I have examined all of the records of the Wells Fargo Bank as well as the records of the Union Trust Company in connection with the storage in vaults and safe deposit boxes in the name of M. E. Heiser alone or with others from 1915 to 1928, inclusive and they do not disclose any other safe deposit boxes or any other deposit in any vaults, storage or otherwise, than I have testified to. The records are complete to my knowledge and belief. The records of the Union Trust Company prior to the merger are in existence and were included in the examination. I examined all records for the name of Maurice E. Heiser, Morrie Heiser and M. E. Heiser.

No Cross Examination.

(Certificate shows deposition taken August 28th, 1941 before Helen V. Flanagan, a Notary Public in and for the

City and County of San Francisco, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, pursuant to notice annexed to deposition.)

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589 JEFFERSON J. GRAVES as a witness for the objectors to the claim of M. E. Heiser testified as follows:

My name is Jefferson James Graves. My legal residence is in Fresno County, California. In 1928 I knew M. E. Heiser and I then resided at the Huntington Apartments in San Francisco. In 1928 I had conversations with M. E. Heiser relative to the sale of products of mines in Australia which Mr. Heiser asserted he filed leases on or owned. He approached me. He told me my Mother had told him that I had connections in France by which I could sell sapphire. He asked me to contact my associates in France in reference to the sale of large quantities of sapphire which he claimed to control. He said he controlled 80% of the sapphire output of the world. This product was to be secured from mines in Australia. In response to Mr. Heiser's request I both wrote and cabled my associate in Paris, Mr. A. LeQuintree, with whom I had formed a limited company under the French law. The International Trading Company. I told Mr. Heiser of the cable and showed him a copy of it. He showed me several parcels of rough and cut stones from the mine. They were rough and cut blue stones. Sapphire. Holding them up to the light, some of them were light, some of them were dark blue, some had yellow streaks in them and some had green streaks. I believe he had a package of small dark stones that he said were rubies. I don't know what they were. He said they were rubies.

I had numerous conversations with him from our first meeting and through to the latter part of August with respect to the sale of stones in France. I also had correspondence with Mr. LeQuintree and various cables with reference to the sale of stones. The correspondence and cables were shown to Mr. Heiser. I have that correspondence and those cables now. The object of the correspondence and cables was to ascertain whether my associate and his contacts in France were interested to sell large quantities of sapphire which Mr.

Heiser stated would be first class quality and very large stones. I received an answer from Mr. LeQuintrec and communicated it to Mr. Heiser which was in effect that if he could supply or furnish the quality of sapphire that he stated he had, and the sizes, that my contacts in Paris had agreed to sell to three different concerns a large quan-
590 tity of sapphire.

I met Mr. Heiser in Los Angeles in 1928—the latter part of August with Mr. Calvin Smith. I met him at the hotel and from there walked to the office of his attorneys. I have their names in my file. When I met Mr. Heiser in Los Angeles, I had agreed to go to France. I told him I would go to France and meet him there and introduce him to my associate, Mr. LeQuintrec, and Mr. Bietrix, a wholesale jeweler. The suggestion of a meeting in France came from Mr. Heiser either in a conversation at the Huntington Apartments or at my office at 625 Market Street about two months before I went to Los Angeles. He wanted me to go because I knew the French people, and could speak the language, and he did not, and he thought it would be very advantageous if I were there to assist him in the sale of sapphire. He stated that he had in the vaults of the Bank of Australasia, in London, as I recall it, something over 5,000 ounces of very fine sapphire, and in which there were fine blues, and large stones that he had agreed to show to my contacts.

In a conversation with Mr. Heiser as we proceeded from his hotel to his attorneys' office, he had with him some papers and among them were some stock certificates that he called gold certificates and he wished to sell me some of them. The corporation was the Golden State Gem Company of Nevada, as I recall. He showed me some of the certificates. I told him I would not buy any. I was not interested in buying any. He wanted me to go on the Board of Directors and become an officer of the corporation and I refused to do that. He offered me an inducement but what it was I am not certain. He stated that the corporation had or was entering into a contract with the Heiser Burmah Sapphires, Ltd., I believe is the name, of Australia, to purchase their entire output and any agreement he had with the International Trading Company would have to be with the Golden State

Gem Company of Nevada. He also stated that he had or was turning over to the Golden State Gem Company of Nevada a large quantity of industrial sapphire and other stones for which he was to receive stock in the corporation.

I accompanied him to his attorneys' office in Los Angeles on that occasion. He introduced me to an attorney there whose name I don't recall. My recollection is that it was for the purpose of drawing an option, or writing me a letter in option form, for the sale of his products in Europe. This letter which you hand me is the letter. The change in date on the next to the concluding line of the second page,
591 and of the month, with initials, was done in my presence. The reason for the change was that Mr. Heiser continually delayed his date of sailing and the 30th day of August would not have given sufficient time to have *consumated* a deal. The change made was suggested by me. This letter is offered in evidence as "Objector's Exhibit No. 1" and is as follows:

Objector's Exhibit 1.

Frank L. Hart, Official Shorthand Reporter.

Clifford A. Rohe
Herbert Freston
George W. Nilsson
L. E. Tripp
Henry S. Dottenheim
Alfred Barstow
Robert E. Mulroney
J. R. Files
H. E. Bianchi
Ralph E. Lewis
Clyde F. Murphy
Gerald V. Weikert
Charles H. King
J. A. McLaughlin
Sydney Wetzler
James T. Boyle
Thomas J. Clark
Harold P. Curtis

Law Offices
Rohe & Freston
1010 Hellman Bank Building
Los Angeles, California

In Reply Refer to Mr.
File No.

August 30, 1928

Mr. James Jefferson Graves, Washington Arms Apartments, 36th and Speedway, Venice, California.

Dear Sir: I am authorized by the Board of Directors of the Golden State Gem Company of Nevada, to offer you an exclusive option for the purpose of closing a contract with a French Syndicate, subject to my approval, for the sale of

the following rough sapphires each year, for a period of twenty years:

#1 grade blue sapphires, up to 2000 ounces, $60.00 per ounce;
#2 grade blue sapphires, up to 1000 ounces $40.00 per ounce;
#3 grade blue sapphires, up to 100 ounces $20.00 per ounce;
#4 grade blue sapphires, up to 1000 ounces $10.00 per ounce.

together with the exclusive right to receive special offerings of gems not coming with the above grades. Samples will be prepared and submitted covering size and quality of each grade.

I will proceed to Europe with you with the necessary legal authority to execute such contract as may be agreed upon.

This option to you for the securing of the contract with the French Syndicate shall be good up to and including the 30th day of October. November M. M.

Very truly yours,

MORRIE HEISER.

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592 The letter is addressed to me at Washington Arms Apartments. I had taken an apartment on the beach to go swimming.

I sailed on the steamer "Paris" the latter part of September, 1928. I think it was the 22nd and landed at LeHavre. I had an arrangement to meet Mr. Heiser in London as soon as I could get Mr. LeQuintree and his contacts to go there with me or to meet us there. Mr. LeQuintree and I met Mr. Heiser in London very early in October—the 4th, I believe, of October, 1928. Mr. LeQuintree, Mr. Heiser and I discussed the sale of the sapphire. Mr. Heiser wanted us to form a company for the purpose of selling stock on the French Bourse or Stock Exchange. At that time we were awaiting the arrival of Mr. Poncet, of Gruet et Cie, and Mr. Bietrix. Gruet et Cie were large buyers and cutters of col-

ored stones in Paris and Mr. Poncet was a member of the firm. Mr. Poncet and Mr. Bietrix came to London and we had a meeting with Mr. Heiser the next morning after their arrival which was I think October 6th, 1928. We met in the vaults of the Bank of Australasia on the Strand in London. Mr. LeQuintrec, Mr. Bietrix, Mr. Poncet, Mr. David Hack of London, Mr. Heiser, Mrs. Heiser and myself and the manager of the vaults were present at the meeting. Mr. Hack was a friend of Mr. LeQuintrec and he was interested in going into the deal if it appeared satisfactory to him on investigation. The members of the bank brought out of the vault various packages, canvas bags, and cans containing stones which were opened in our presence and examined by the experts, Mr. Poncet and Mr. Bietrix. Mr. Bietrix said, "Well, show us some good stones." Mr. Heiser continued to open the packages and Mr. Poncet shook his head. Mr. Poncet also spoke but just what he said I don't recall. He said something aside to Mr. Bietrix to start with and Mr. Bietrix said, "Well, show us some good stones. Where are they?" Mr. Heiser continued to open packages. Mr. Poncet continued his examination and then said, "Why, this has all been picked over; many of these stones have been tried on a wheel. This is not unpicked-over rough sapphire. It has all been picked over." Mr. Bietrix demonstrated anger, and in a very loud voice cried, "Show us one big stone—show me one—only one; I ask to see only one big stone."

593 Heiser was unable to show one good big stone, and finally admitted in the presence of these gentlemen that the sapphire there had all been picked over many times. He said he had a number of additional packages on the way from Australia which he expected to arrive any day and among them would be some big stones of the finest quality along with many large stones. I think he said there would be 9 packages. We then left the bank.

It was arranged between Mr. Heiser, Mr. LeQuintrec and myself that Mr. Heiser, upon the arrival of these packages that were coming to London, would bring them to Paris without opening them and open them in our presence in the office of Mr. Bietrix. I advised him where the offices were. Mr. LeQuintrec and Mr. Bietrix then returned to Paris. I

waited over a couple of days and then returned to Paris. I told Mr. Heiser that he would have to show these gentlemen the sapphire that he had agreed to show or he could not do any business with them.

We met with Mr. Heiser again in Mr. Bietrix' office in Paris about the middle of October—I think it was the 12th. Mr. Bietrix, Mr. Le Quintrec, Mr. Heiser and myself were there. We had several meetings. Mr. Heiser opened several parcels of sapphire. Among them were quite a number of cut sapphire that were very, very poorly done; they were cut in Australia. Mr. Bietrix said they were very poorly done in Mr. Heiser's presence and Mr. Heiser said they had been cut at a cost of I believe $2 a carat. Mr. Bietrix told him it never should have been done; that it was so poorly done they would have to be recut; that they weren't saleable in their present condition. Cutting in France at that time I think was ten francs, which was about forty cents. There was one parcel that Mr. Bietrix said he could sell. He told Mr. Heiser that it was the only parcel that he thought was saleable. It contained only small stones. I don't recall the number. I think it was said it was 30 ounces. Mr. Bietrix sold it. We acted as brokers for Mr. Heiser and sold it for 35,000 francs which was about $1400.00. The package was sold as a unit. There were more than 20 or 30 stones but I can't recall the number. We told Mr. Heiser that if he could furnish large stones of good color and at a price that would meet competition; that if he did so, we could handle it. Mr. Heiser asked Mr. LeQuintrec, Mr. Bietrix and myself to form a company: He said, "I want a stock play; give me a play—give me a stock play." Mr. LeQuintrec told him that unless he had the goods they would not consider forming any company. No company was formed. We went
594 no further with finding an outlet for his products because he did not furnish the quality of product he agreed to.

(Certificate of Notary shows deposition taken on August 29th, 1941 before Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, State of California, at the office of Oscar Samuels, Esq., Room 1700, 333

Montgomery Street, San Francisco, California, pursuant to notice to take deposition annexed to deposition.)

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595 E. A. LOBREE, as a witness for the objectors to the claim of M. E. Heiser, testified by deposition as follows:

Direct Examination.

I am a resident of San Francisco and reside at 8021 Geary Boulevard. Mr. M. E. Heiser is my brother-in-law, having married my sister about the end of 1915 or early in 1916, right after the World's Fair in San Francisco. He is a gem merchant, handling principally opals, sapphires, emeralds, rubies and zircons, both cut and rough. He has been in the business ever since I have known him. A quantity of industrial sapphires belonging to Mr. Heiser were stored at my home in 1922 or 1923. I don't know the exact date I bought my home but it was somewhere around 1923, and just before that I lived at 367—12th Avenue. There was a large quantity of these industrial sapphire—enough to fill approximately three or four shipping cases which would be in the neighborhood of four square feet and three or four feet high. They were very heavy and it might have been as much as two tons. It was brought over here by Heiser from Australia and brought out to my house by a draying company. I can't remember if it was in boxes or not when it was transported to my house. I remember when it was opened it was in these five-gallon oil tins—packed in these oil cans, and they were all sealed up. The material was stored at my house from one to two years, maybe more or less, then it was shipped to New York in one shipment, evidently at Mr. Heiser's instructions *because* nobody else could give me any instructions regarding that material. I understood from Mr. Heiser that in New York it was sent to the Lincoln Vaults and stored there. I don't know whether this material was ever reshipped by Mr. Heiser back to San Francisco. He never told me anything on that subject. I don't think any other material belonging to Mr. Heiser was ever stored at my house. I understood that Mr. Heiser owned or worked some sapphire mines in Australia.

I do not recall filing a claim on behalf of Mr. Heiser as his attorney-in-fact in the matter of bankruptcy of Golden State Gem Company, a California corporation, pending in the District Court of the United States for the Southern District of California, Central *Civision.* I have no recollection on that subject whatsoever except that I was shown where I signed some claim. That is the only recollection I have of it and that does not refresh my recollection.

596 I was not in a position by my own knowledge to place a valuation, whether in a claim that I have referred to, or otherwise, upon uncut industrial sapphires. If I placed a valuation in such a claim, I got it from Mr. Heiser. It is too long ago. I wouldn't remember whether I did or not. I don't remember having spoken to Mr. Heiser about the claim in bankruptcy.

I know that Mr. Heiser has been buying and selling sapphires ever since I have known him. I know he made several trips back and forth to Australia. I have heard from my sister and from him that he mined the things over there and he is making his living out of it and selling them. It is his business. He bought some of the stones that he sold. As far as my knowledge goes, he bought them from miners in Australia and he also mined some. He told me that he bought some from gem merchants that came over from Australia. I do not know the quantity he bought. He bought them anywhere between 1915 and 1925 or 1926. Somewhere along in there. It was over a long period of time. He would buy them whenever he had the opportunity. If they were offered to him and if the purchase in his opinion was of the right value, he would buy them. I am referring to uncut material. He would cut some of them himself. He had a cutting plant in the Lick Building on Sutter Street, between Montgomery and Kearny Streets; and then at his home *had* had a cutting plant set up for a long time. He would sell them to jewelers, both retailers and wholesalers, and to cutting establishments in New York and elsewhere. The information that I have is all gotten from him.

I never did know of Mr. Heiser having any uncut industrial sapphires in a vault in any bank in San Francisco.

The Sapphire Mining & Cutting Corporation was a corporation formed by Mr. Heiser and others for the purpose of forming a complete chain from the mine to the wholesaler of precious Australian gems such as sapphires, opals, etc. I had an inactive interest in the company. I was to assist Mr. Heiser and for the things I was to do for him here I was to get a little stock out of it. I never did get any stock. Mr. Heiser was supposed to get some stock out of it. I was present at some of the meetings. This corporation was active for approximately two years and is not active now.

I have heard of the Heiser Burmah Sapphires, Ltd. I presume it was formed by Mr. Heiser since it has his name in it. Mr. Heiser always sold the gems that he handled
597 during the period from 1915 to 1928. He made his living that way. I do not know exactly what quantities he sold but he made nice sales every once in a while.

No Cross Examination.

(Certificate of Notary shows deposition taken October 7th, 1941 before Helen V. Flanagan, a Notary Public in and for the City and County of San Francisco, California, at the office of Oscar Samuels, Esquire, Room 1700, 333 Montgomery Street, San Francisco, in pursuance of the notice annexed to the deposition.)

[Objectors' exhibit 1 to the deposition of Claire E. Cone, reporter's transcript, Department of Investment, Division of Corporations, State of California, in re investigation and examination of International Gems, is identical with objectors' exhibit RR-2, the designated portions of which appear at page 1169.]

[Objectors' exhibit 1 to the deposition of H. A. Dewing, reporter's transcript of proceedings on motion to vacate judgment and set aside default, No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with objectors' exhibit CC, which appears at page 987.]

[Objectors' exhibit 2 to the deposition of H. A. Dewing, reporter's transcript of proceedings, June 19, 22, 23, 27, 28, 1939, case No. 7256-C, Law, United States District Court, Southern District of California, Heiser v. Woodruff et al., is identical with objectors' exhibit RR, the designated portions of which appear at page 1120.]